

Exhibit 2

Page 1

1 L. Kruger
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4
5 -----x
6 In Re: Case No.
7 RESIDENTIAL CAPITAL, LLC,
et al., (Jointly Administered)
8 (Bankr. S.D.N.Y.)

Debtors

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-----x
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15 DEPOSITION OF LEWIS KRUGER
16 New York, New York
17 Thursday, July 11, 2013

23 Reported by:
24 THOMAS A. FERNICOLA, RPR
25 JOB NO. 63547

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1 L. Kruger
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6
7 July 11, 2013
8 10:06 a.m.
9
10 Deposition of LEWIS KRUGER, held at the
11 Law Offices of White & Case, LLP, 1155 Avenue of
12 the Americas, New York, New York, before
13 Thomas A. Femicola, a Registered Professional
14 Reporter and Notary Public of the State of New
15 York.
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Page 3

1 L. Kruger
2 APPEARANCES:
3
4 WHITE & CASE
5 Attorneys for the Ad Hoc Group of
6 Junior Secured Noteholders
7 1155 Avenue of the Americas
8 New York, New York 10036
9 BY: J. CHRISTOPHER SHORE, ESQ.
10 VANESSA SODERBERG, ESQ.
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14 MORRISON & FOERSTER
15 Attorneys for the Debtor and the Witness
16 1290 Avenue of the Americas
17 New York, New York 10104
18 BY: CHARLES KERR, ESQ.
19 J. ALEXANDER LAWRENCE, ESQ.
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Page 4

1 L. Kruger
2 APPEARANCES (Continued):
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4 KRAMER LEVIN NAFTALIS & FRANKEL
5 Attorneys for the Official Committee
6 of Unsecured Creditors
7 1177 Avenue of the Americas
8 New York, New York 10036
9 BY: PHILIP KAUFMAN, ESQ.
10 DANIEL EGGERMANN, ESQ.
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14 WILLKIE FARR & GALLAGHER
15 Attorneys for Monarch, Stonehill,
16 Bayview and CQS
17 787 Seventh Avenue
18 New York, New York 10019
19 BY: MARY EATON, ESQ.
20 EMMA JAMES, ESQ.
21
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23
24
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Page 5

1 L. Kruger
2 APPEARANCES (Continued):
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4 JONES DAY
5 Attorneys for FGIC
6 222 East 41st Street
7 New York, New York 10017
8 BY: RICHARD WYNNE, ESQ.
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11 ALSTON & BIRD
12 Attorneys for Wells Fargo
13 90 Park Avenue
14 New York, New York 10016
15 BY: WILLIAM HAO, ESQ.
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McKOOL SMITH
Attorneys for Freddie Mac
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New York, New York 10036
BY: MICHAEL CARNEY, ESQ.

2 (Pages 2 to 5)

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1 L. Kruger
2 A P P E A R A N C E S (Continued):
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4 DECHERT
5 Attorneys for Bank of New York Mellon
6 1095 Avenue of the Americas
7 New York, New York 10036
8 BY: JAMES MOORE, ESQ.
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10 SEWARD & KISSEL
11 Attorneys for Law Debenture Trust
12 Company of New York
13 One Battery Park
14 New York, New York 10004
15 BY: MICHAEL WEITMAN, ESQ.
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1 L. Kruger
2 A P P E A R A N C E S (Continued):
3
4 ROPES & GRAY
5 Attorneys for Steering Committee of
6 RMBS Holders
7 800 Boylston Street
8 Boston, Massachusetts 02199
9 BY: ANDREW DEVORE, ESQ.
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1 L. Kruger
2 L E W I S K R U G E R,
3 called as a witness, having been duly sworn
4 by a Notary Public, was examined and
5 testified as follows:
6 BY THE REPORTER:
7 Q. Please state your full name and
8 address for the record.
9 A. Lewis Kruger, 257 West 86th Street,
10 New York, New York.
11 (A Discussion was Held off the
12 Record.)
13 MS. EATON: Mary Eaton, Willkie
14 Farr & Gallagher, on behalf of Monarch,
15 Stonehill, Bayview and CQS, together with
16 my colleague, Emma James.
17 MR. KERR: Charles Kerr of Morrison
18 Foerster, on behalf of the debtor. And
19 I'll be representing Mr. Kruger, and with
20 my colleague, Alex Lawrence.
21 MR. WYNNE: Richard Wynne of Jones
22 Day on behalf of FGIC.
23 MR. HAO: William Hao, on behalf of
24 Wells Fargo.
25 MR. KAUFMAN: Phillip Kaufman from

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1 L. Kruger
2 Kramer Levin, on behalf of the committee.
3 And with me is Daniel Eggermann, also on
4 behalf of the committee.
5 MR. CARNEY: Michael Carney from
6 McKool Smith, on behalf of Freddie Mac.
7 MR. MOORE: James Moore from Dechert,
8 on behalf of Bank of New York Mellon.
9 MR. WEITMAN: Mike Weitman from
10 Seward & Kissel, on behalf of Law
11 Debenture.
12 MS. SODERBERG: Vanessa Soderberg
13 from White & Case, on behalf of Junior
14 Secured Noteholders.
15 MR. SHORE: Chris Shore from White &
16 Case on behalf of Junior Secured
17 Noteholders.
18
19 EXAMINATION BY MS. EATON:
20 Q. Good morning, Mr. Kruger. I see
21 you've got a cup of coffee --
22 A. I do.
23 Q. -- and you're comfortable, I hope.
24 A. I am.
25 Q. If ever you need a --

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1 L. Kruger
 2 MR. KERR: Let her -- he is the most
 3 important person here --
 4 THE WITNESS: Okay.
 5 MR. KERR: -- so let her ask her
 6 question and then you respond.
 7 BY MS. EATON:
 8 Q. If ever you need a break, just let me
 9 know and we'll take one for you.
 10 A. Thank you.
 11 Q. Now, I understand that you served or
 12 are still serving as chief restructuring
 13 officer of the debtors?
 14 A. Yes, I am.
 15 Q. And you were appointed in that role,
 16 I believe on February 11th of 2013?
 17 A. Yes.
 18 Q. And is it also correct that the court
 19 approved your appointment as CRO of the debtors
 20 on March 5, 2013?
 21 A. That is correct.
 22 Q. Now, I have read a little bit about
 23 your background. You've worked for many years
 24 as a restructuring attorney; is that correct?
 25 A. Yes, it is.

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1 L. Kruger
 2 Q. And prior to your serving as CRO of
 3 the debtors, you were a partner at Stroock; is
 4 that correct?
 5 A. Correct.
 6 Q. And you were co-head of the
 7 restructuring department at that firm?
 8 A. Yes.
 9 Q. When you started in your role as
 10 chief restructuring officer of the debtors, you
 11 were not serving the debtors in any kind of
 12 legal capacity, were you?
 13 A. No, I was not.
 14 Q. It was not part of your role as CRO
 15 to give legal advice to the debtors; correct?
 16 A. Correct.
 17 MS. EATON: This will be Kruger 1.
 18 BY MS. EATON:
 19 Q. In a moment the court reporter is
 20 going to be handing you a document that we will
 21 mark as Kruger Exhibit 1, which is the
 22 Settlement Agreement dated as of May 23, 2013,
 23 filed in the debtor's Chapter 11 cases under
 24 Docket No. 3929-2.
 25

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1 L. Kruger
 2 (Kruger's Exhibit 1, Settlement
 3 Agreement dated May 23, 2013, was marked
 4 for identification.)
 5 BY MS. EATON:
 6 Q. Are you familiar with this document?
 7 A. Yes, I am.
 8 Q. And this is the Settlement Agreement
 9 between the parties listed on this second
 10 physical page of the document, between FGIC,
 11 the debtors, the trustees and others?
 12 A. Yes.
 13 Q. If I refer to this as the "FGIC
 14 Settlement Agreement," would that be all right
 15 with you?
 16 A. Yes, it will be.
 17 Q. By the way, did you refer to this
 18 agreement using any particular description?
 19 A. No.
 20 Q. When did you first become aware of
 21 the FGIC Settlement Agreement?
 22 A. During the latter part of May of this
 23 year.
 24 Q. How did you first become aware of the
 25 FGIC Settlement Agreement?

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1 L. Kruger
 2 A. I saw the document May 20th, 22nd,
 3 23rd, some date like that.
 4 Q. How did you come to first see the
 5 FGIC Settlement Agreement on or about May 23,
 6 2013?
 7 A. I don't recall.
 8 Q. You don't remember who showed it to
 9 you?
 10 A. No.
 11 Q. You don't remember if your counsel
 12 provided it to you?
 13 A. I just don't recall.
 14 Q. Were you aware of the existence of a
 15 settlement agreement involving the FGIC wrapped
 16 trusts before May 23, 2013?
 17 A. I'm sorry, can you repeat the
 18 question? You're talking about a settlement
 19 agreement or a settlement?
 20 Q. It's a fair point.
 21 Prior to May 23, 2013, were you aware
 22 that there were discussions underway between
 23 and among FGIC, the trustees and others, with
 24 respect to potential commutation of the FGIC
 25 wrapped policies?

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1 L. Kruger
 2 MR. KERR: Objection.
 3 BY MS. EATON:
 4 Q. You can answer.
 5 A. Yes.
 6 Q. And how did you become aware that
 7 there were negotiations on that subject?
 8 A. In, I guess in early April as part of
 9 the mediation, I became aware that there was a
 10 prospective settlement between FGIC and the
 11 trusts.
 12 Q. Did you say a "prospective
 13 settlement"?
 14 A. Yes.
 15 Q. How did you come to learn that there
 16 was a prospective settlement of that sort?
 17 A. Through the mediation process.
 18 Q. What do you mean by that?
 19 MR. KERR: Mary, we're going to
 20 have -- let me just help the witness here.
 21 MS. EATON: Well --
 22 MR. KERR: No.
 23 MS. EATON: -- they're his words.
 24 Those are the words he used. I'm just
 25 asking him what he meant by that, and I

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1 L. Kruger
 2 prefer that you not make speaking
 3 objections or assist the witness in
 4 answering a question regarding his own
 5 language.
 6 MR. KERR: I'm not trying to assist
 7 the witness. All I wanted to state is, as
 8 you were aware, there is an order entered
 9 by the court providing for confidentiality
 10 with respect to the mediation.
 11 In answering any questions,
 12 Mr. Kruger, is respecting that
 13 confidentiality. So he is free to answer
 14 questions as he can, consistent with that
 15 confidentiality order.
 16 I just want to be very clear that
 17 what he is going to be acting and
 18 testifying consistently. Okay.
 19 MS. EATON: I understand your
 20 position. You understand we disagree with
 21 that position. Both of us are reserving
 22 our rights.
 23 BY MS. EATON:
 24 Q. Can you please answer the question,
 25 Mr. Kruger, what did you mean when you used the

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1 L. Kruger
 2 words, quote, "through the mediation process,"
 3 close quote?
 4 A. I saw a -- I saw a proposal for a
 5 settlement.
 6 Q. A physical proposal, as in a
 7 document?
 8 A. I believe so.
 9 Q. Was it a term sheet?
 10 A. I think it may have been.
 11 Q. It wasn't a fully fleshed out
 12 agreement in any sense of that term; is that
 13 fair?
 14 A. Yes.
 15 Q. Who showed you the proposal?
 16 A. I don't recall.
 17 Q. Was it during a mediation session,
 18 per se, with the mediator that you saw that
 19 document?
 20 MR. KERR: Objection.
 21 BY MS. EATON:
 22 Q. Let me fix it.
 23 Was it in a session at which the
 24 mediator was present that you first saw that
 25 document?

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1 L. Kruger
 2 A. I just don't recall.
 3 Q. It could have been in the presence of
 4 Judge Peck or outside the presence of Judge
 5 Peck?
 6 MR. KERR: Objection.
 7 A. No.
 8 Q. You don't remember one way or the
 9 other?
 10 A. No.
 11 Q. Who else was there?
 12 A. I think counsel from MoFo.
 13 Q. Anyone else?
 14 A. Not that I recall.
 15 Q. Was it counsel from MoFo who showed
 16 you the document?
 17 A. I don't recall.
 18 Q. Do you have any understanding of how
 19 that document came to be, that is, how it came
 20 to be prepared?
 21 A. No, I don't.
 22 Q. Do you know who was involved in
 23 preparing the document?
 24 A. No, I don't.
 25 Q. Do you know anything at all about the

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1 L. Kruger
 2 discussions that led to the preparation of that
 3 document?
 4 A. No.
 5 Q. That's a "yes" or "no" question.
 6 MR. KERR: That's fair.
 7 BY MS. EATON:
 8 Q. Let me, just so the court reporter
 9 gets it down straight, do you know anything at
 10 all about the facts and circumstances that led
 11 to the preparation of that document?
 12 A. No, I do not.
 13 Q. Would it be fair to say that you
 14 personally had no idea that there were
 15 discussions underway about an -- possible
 16 settlement involving the FGIC wrapped trusts?
 17 MR. KERR: Objection.
 18 A. I don't recall knowing anything about
 19 that before I saw the April presentation.
 20 Q. Prior to the date when you saw that
 21 that document, the term sheet, had you
 22 participated in mediation sessions with
 23 Magistrate Judge Peck?
 24 A. Yes.
 25 Q. And during any of those sessions, was

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1 L. Kruger
 2 the subject of a potential settlement involving
 3 the FGIC wrapped trusts ever discussed? I'm
 4 not asking you to describe it, just "yes" or
 5 "no," was it ever discussed?
 6 MR. KERR: And I will let him answer
 7 that question, but no further, if you
 8 recall.
 9 A. Yes.
 10 Q. When?
 11 A. During mediation sessions.
 12 Q. Can you give the date?
 13 A. No.
 14 Q. Even an approximate date?
 15 A. March.
 16 Q. Some time in March? Early March,
 17 late March, any idea?
 18 A. No recollection.
 19 Q. Who was at the mediation session when
 20 that subject was raised?
 21 A. I have no idea.
 22 Q. Was it the -- was it an all-hands
 23 session? Do you know what I mean by that?
 24 MR. KERR: Objection.
 25

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1 L. Kruger
 2 BY MS. EATON:
 3 Q. Okay.
 4 Let me rephrase the question.
 5 There were -- isn't it correct that
 6 there were sessions with the mediator that
 7 sometimes involved all of the mediating parties
 8 and sometimes involved a subset of the
 9 mediating parties?
 10 A. Yes.
 11 Q. At this particular session that you
 12 described, was this an occasion where all of
 13 the mediating parties were present or rather an
 14 occasion where a subset of the mediation
 15 parties were present?
 16 MR. KERR: Objection to form.
 17 A. I think a subset. I don't recall.
 18 Q. At that session, did anyone present
 19 indicate whether the prospective settlement
 20 under discussion had been reduced to any kind
 21 of a writing?
 22 MR. KERR: Objection. And I'll
 23 direct him not to answer that in
 24 confidentiality, based on the
 25 confidentiality mediation.

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1 L. Kruger
 2 BY MS. EATON:
 3 Q. I assume you're going to follow your
 4 counsel's direction.
 5 A. I am going to in this case.
 6 Q. Do you know who was involved in those
 7 discussions about this potential settlement?
 8 MR. KERR: Objection. Asked and
 9 answered.
 10 A. No.
 11 Q. Do you know whether anyone else at
 12 the debtor's knew who was involved in those
 13 discussions?
 14 A. I don't know.
 15 Q. Is that something that you would have
 16 known in your capacity as chief restructuring
 17 officer of the debtor's?
 18 MR. KERR: Objection.
 19 A. I just don't know whether anybody
 20 from the debtor had any of those discussions.
 21 Q. Did you have discussions with --
 22 leaving aside, the debtors have a board of
 23 directors; right?
 24 A. Yes.
 25 Q. And you discussed from time to time

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1 L. Kruger
 2 the progress of discussions, mediation
 3 discussions, didn't you?
 4 A. Yes.
 5 Q. You would report to the board on what
 6 was occurring during the mediation sessions?
 7 A. Yes.
 8 Q. Apart from members of the board, did
 9 you discuss the mediation with anyone else at
 10 the debtors? And I'm excluding the debtor's
 11 outside counsel.
 12 MR. KERR: So anyone other than
 13 board?
 14 BY MS. EATON:
 15 Q. Anyone other than board and apart
 16 from the debtor's outside counsel, did you
 17 discuss with anyone else at the debtor's
 18 anything to do with the mediation?
 19 A. Not that I recall.
 20 Q. At the mediation sessions, did anyone
 21 from the debtors present the debtors other than
 22 yourself? And, again, I'm excluding outside
 23 counsel.
 24 A. No.
 25 Q. But you yourself represented the

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1 L. Kruger
 2 debtors at those sessions?
 3 A. Yes.
 4 Q. I just want to make sure I understand
 5 something.
 6 So in early April when you learned of
 7 this prospective settlement, I think is what
 8 you said, would it be fair to say this was news
 9 to you?
 10 MR. KERR: Objection. Asked and
 11 answered.
 12 THE WITNESS: Can I answer?
 13 MR. KERR: You can answer.
 14 A. Yes.
 15 Q. During the period between this
 16 mediation session in early April and the time
 17 you first saw the agreement on May 23rd, did
 18 you have any discussions about the FGIC
 19 settlement or a prospective FGIC settlement?
 20 MR. KERR: You can answer that "yes"
 21 or "no."
 22 A. No.
 23 Q. When you first learned about the
 24 prospective FGIC settlement in early
 25 April 2013, did you report that fact to the

Page 24

1 L. Kruger
 2 debtors, the board of directors of the debtors?
 3 A. I don't recall.
 4 Q. Did you discuss that with the
 5 debtor's outside counsel, "yes" or "no"?
 6 A. Yes.
 7 Q. You did?
 8 A. Yes.
 9 Q. On how many occasions?
 10 A. Several.
 11 Q. Did you discuss that the settlement,
 12 the FGIC settlement with the board on or about
 13 May 23rd?
 14 A. Yes.
 15 Q. But you had not discussed the FGIC
 16 settlement or a prospective FGIC settlement
 17 with the board before that date; correct?
 18 A. No, that's not correct.
 19 Q. Okay.
 20 Then I misunderstood. When did you
 21 discuss the FGIC settlement or the prospective
 22 FGIC settlement with the board of directors of
 23 the debtor's?
 24 A. My best recollection is probably
 25 early May.

Page 25

1 L. Kruger
 2 Q. Is that the first time that you
 3 discussed the prospective FGIC settlement with
 4 the board?
 5 A. I think so.
 6 Q. Did you discuss the, either the
 7 settlement itself or the prospective FGIC
 8 settlement with the board after that?
 9 A. Yes.
 10 Q. How many times?
 11 A. I don't recall.
 12 Q. More than once?
 13 A. I just don't recall.
 14 Q. What did you discuss in this early
 15 May discussion you had with --
 16 MS. EATON: Let me get my question
 17 out and you can make your objection. I
 18 think you know that's the way it works.
 19 BY MS. EATON:
 20 Q. Was this early May discussion with
 21 the debtor's board that you referenced, was
 22 that at a board meeting?
 23 A. Yes.
 24 Q. Was it a telephonic board meeting,
 25 in-person meeting?

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1 L. Kruger
 2 A. I don't recall.
 3 Q. Would your time records reflect
 4 whether it was an in-person meeting or a
 5 telephonic meeting?
 6 A. They probably do.
 7 Q. By the way, did you -- you're aware
 8 that there was a request for documents made in
 9 connection with the present dispute?
 10 A. Yes.
 11 Q. Did you look for any documents?
 12 A. Yes, I did.
 13 Q. Okay.
 14 Did you look at your time records?
 15 A. I reviewed them myself.
 16 Q. To see whether they were responsive
 17 to the request that had been propounded;
 18 correct?
 19 A. Yes.
 20 Q. And did you find anything in your
 21 time records that was responsive?
 22 A. I don't think so.
 23 Q. Was there a reference in your time
 24 records to the early May board meeting?
 25 A. I don't recall.

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1 L. Kruger
 2 Q. Was the settlement agreement
 3 referenced in your time records at all?
 4 A. Well, the settlement agreement didn't
 5 come into existence until the latter part of
 6 May.
 7 Q. Uh-huh.
 8 A. I could not have referenced it prior
 9 to that time.
 10 Q. That wasn't a time limited question,
 11 actually, so if you were confused, let's get
 12 that sorted out.
 13 Let's talk about your time records
 14 generally. And correct me if I am wrong, I
 15 understood that -- you to say, to testify, that
 16 in connection with producing documents as part
 17 of this, the present motion, you reviewed your
 18 time records for responsive information.
 19 A. Correct.
 20 Q. And did you see anything in reviewing
 21 your time records that referenced the FGIC
 22 Settlement Agreement?
 23 A. No.
 24 Q. Did you see anything in your time
 25 records that referenced a prospective FGIC

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1 L. Kruger
 2 settlement?
 3 A. No.
 4 Q. Discussions about a potential FGIC
 5 settlement?
 6 A. I don't recall seeing it.
 7 Q. What did your time records say about
 8 this meeting with the board in early May 2013?
 9 MR. KERR: Objection. Assumes facts
 10 not in evidence.
 11 BY MS. EATON:
 12 Q. Do your time records reflect the fact
 13 that there was a board meeting in early
 14 May 2013?
 15 A. I believe so.
 16 Q. What do your time records say about
 17 that meeting, if anything?
 18 A. I don't recall.
 19 Q. Are there minutes of that meeting?
 20 A. I don't know.
 21 Q. Was there a person responsible for
 22 preparing minutes of the board of directors
 23 meetings?
 24 A. I don't know.
 25 Q. Have you ever seen minutes of the

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1 L. Kruger
 2 meetings of the board of directors of the
 3 debtor's that you attended?
 4 A. No.
 5 Q. Neither the final minutes nor draft
 6 minutes?
 7 A. No.
 8 Q. Does the board of directors of the
 9 debtors maintain a minute book? Do the debtors
 10 maintain a book of minutes reflecting the
 11 meetings of its board?
 12 A. I don't know.
 13 Q. You have no idea one way or the
 14 other?
 15 A. Correct.
 16 Q. So when you were brought on as chief
 17 restructuring officer of the debtors, you did
 18 not as part of your duties, you did not look at
 19 any board minutes in connection with that; is
 20 that right?
 21 A. That's correct.
 22 Q. And you didn't ask anybody whether
 23 there were any minutes?
 24 A. That's correct.
 25 Q. And you didn't ask anybody whether

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1 L. Kruger
2 the board had made any decisions with respect
3 to the issues in dispute in connection with the
4 Chapter 11 cases more generally?

5 MR. KERR: Objection.

6 A. Do you want to ask me that question
7 again?

8 MR. KERR: Could we have the question
9 read back.

10 MS. EATON: I'll withdraw that --
11 I'll withdraw the question.

12 BY MS. EATON:

13 Q. Do you know whether the board passed
14 any resolutions related to the FGIC settlement
15 agreement?

16 A. I believe so.

17 Q. And were you at the meeting of the
18 board of directors where that resolution was
19 passed?

20 A. Yes.

21 Q. And was a written resolution provided
22 to the members of the board in advance of the
23 vote?

24 A. I don't know.

25 Q. You don't remember one way or the

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1 L. Kruger
2 other?
3 A. No, I don't remember.
4 Q. Do you remember what the resolution
5 said?

6 A. The board authorized me to proceed
7 with the FGIC settlement.

8 Q. And when did the board give you that
9 authorization?

10 A. During May of 2013.

11 Q. At what meeting?

12 A. I don't recall.

13 Q. How many meetings of the board of
14 directors took place in May 2013?

15 A. Several.

16 Q. Presumably it was some time before
17 May 23rd?

18 A. Yes.

19 Q. What did you and the board discuss
20 about with respect to your being authorized to
21 proceed with the FGIC settlement?

22 MR. KERR: And here I'm going to
23 interject, and I believe you can ask the
24 witness, I believe the board meetings were
25 with counsel present. And to the extent

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1 L. Kruger
2 they were, I think we're going to assert
3 attorney-client privilege.

4 So if you want to determine that, you
5 can; but to the extent that these board
6 meetings were with counsel present, we will
7 assert a privilege.

8 MR. MOORE: Just a clarification from
9 counsel. Irrespective of what was said,
10 it's just the presence of an attorney at
11 that meeting which would lead to an
12 assertion of a privilege?

13 MR. KERR: I'm not asserting that
14 across all aspects, but with respect to
15 this aspect of it, I will.

16 MS. EATON: I don't understand your
17 answer. I thought Chris's question was a
18 fair one.

19 MR. KERR: My response to Chris was
20 simply that I'm not saying all board
21 meetings just because counsel present we
22 are asserting a privilege; but with respect
23 to this issue, we will assert a privilege.

24 MS. EATON: So with respect to --
25 just to be clear, Mr. Kerr, with respect to

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1 L. Kruger
2 this meeting, the debtors are asserting a
3 privilege on the basis that counsel was
4 present at the meeting?

5 MR. KERR: With respect to the
6 board's -- discussions with the board about
7 authorizing Mr. Kruger, to enter in -- to
8 delegate to Mr. Kruger the responsibility
9 of negotiating an entry in the FGIC
10 settlement; correct.

11 BY MS. EATON:

12 Q. Did the board make a business
13 decision to authorize you to enter into that
14 agreement?

15 MR. KERR: Objection.

16 A. I don't know whether it's a business
17 decision, but they authorized me to enter into
18 an agreement.

19 Q. Well, you understand something about
20 what the role of the board of directors of a
21 company is; right?

22 A. Yes.

23 Q. You're a very experienced attorney
24 and you've been working in the field for quite
25 some time; right?

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1 L. Kruger
 2 A. Yes.
 3 Q. And you understand that part of the
 4 role of a board of directors is to make
 5 business determinations about what's in the
 6 best interests of the entity; right?
 7 MR. KERR: Objection.
 8 BY MS. EATON:
 9 Q. Isn't that right?
 10 A. Yes.
 11 Q. And in exercising the board's
 12 business judgment, one of the things that they
 13 sometimes do is to determine whether to enter
 14 into settlement agreements; isn't that right?
 15 MR. KERR: Objection.
 16 A. I assume so.
 17 Q. Okay.
 18 Do you know whether the board of
 19 directors exercised any business judgment in
 20 authorizing you to enter into the FGIC
 21 Settlement Agreement?
 22 MR. KERR: Objection.
 23 A. As I said before, they authorized me
 24 to enter into the FGIC Settlement Agreement.
 25 Q. Do you know anything about the reason

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1 L. Kruger
 2 why the board authorized you to do so?
 3 A. That would be facetious wisdom and
 4 good judgment on their part.
 5 Q. I'm sorry, I didn't understand your
 6 last answer.
 7 A. Why don't you ask me the question
 8 again and I'll answer it.
 9 Q. Sure. I'll ask you a new question.
 10 What were the reasons why the board
 11 authorized you to enter into the FGIC
 12 Settlement Agreement?
 13 MR. KERR: Objection.
 14 A. Because I was the chief restructuring
 15 officer of the company and I had the authority
 16 to do so, and they gave me that authority.
 17 Q. Did you think entering into the
 18 agreement was a good idea?
 19 A. Yes, I did.
 20 Q. Did you believe it was in the best
 21 interest of the debtors?
 22 A. Yes, I did.
 23 Q. Did you express that view to the
 24 board of directors?
 25 A. I'm sure I did.

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1 L. Kruger
 2 Q. What did you say to them in that
 3 regard?
 4 MR. KERR: Objection. Again, to the
 5 extent you had discussions with the board
 6 with counsel present, I will object to
 7 privilege; but to the extent that you had
 8 discussions without counsel present, you
 9 can testify to that.
 10 A. They were all with counsel present.
 11 Q. You formed your own view about the
 12 benefits of entering into this agreement for
 13 the debtors; right?
 14 A. Yes, I did.
 15 Q. And in forming that view, you were
 16 doing so in your capacity as chief
 17 restructuring officer of the debtor's; correct?
 18 A. Correct.
 19 Q. And we've already established, I
 20 think, that in that capacity you were not
 21 serving the debtors in any kind of legal role;
 22 right?
 23 A. Correct.
 24 Q. Okay.
 25 So what did you tell the board of

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1 L. Kruger
 2 directors about your view why entering into the
 3 agreement was in the debtor's best interests?
 4 MR. KERR: And, again, if you had
 5 conversations with the board with counsel
 6 present, I'm going to assert a privilege.
 7 To the extent you had conversations with
 8 the board without counsel present, you can
 9 answer the question.
 10 A. The only conversation I had with the
 11 board were with counsel present.
 12 Q. In forming -- you had thoughts
 13 internally about whether it was in the best
 14 interests of the debtor's to enter into this
 15 agreement; right?
 16 A. Yes.
 17 Q. What were your thoughts on that
 18 subject?
 19 A. I thought that this agreement as part
 20 of the overall global settlement agreement, was
 21 sensible from the debtor's perspective, which
 22 is my perspective, in that it eliminated from
 23 the debtor's estates significant claims by the
 24 trusts and by FGIC.
 25 At the same time it was part of the

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1 L. Kruger
2 mosaic of the global settlement agreement,
3 which generated in my mind a significant
4 benefit to all of the debtor's estates and to
5 their creditors, as well, with the injection of
6 the Ally contribution, the elimination of
7 significant litigation, the shortening of the
8 time process of the Chapter 11 proceedings.
9

10 And for all those reasons, I thought
11 this was a sensible things for the debtors to
do.

12 Q. And did you convey that view to the
13 board of directors?

14 A. I don't recall.

15 Q. Do you have any knowledge of the
16 basis on which the board of directors
17 authorized you to enter into the FGIC
18 Settlement Agreement on the debtor's behalf?

19 A. As I said, in my engagement letter I
20 believe I have the authority to act on behalf
21 of the debtors with respect to Chapter 11
22 issues, disclosure statements and the like. I
23 can refer to it, if you like.

24 And I think the board was merely
25 confirming my authority to do so.

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1 L. Kruger
2 Q. Do you believe that you had authority
3 to enter into the FGIC Settlement Agreement
4 without the approval of the board of directors?

5 A. I believe so.

6 Q. Why then did the board of directors
7 pass a resolution authorizing you to sign the
8 agreement?

9 MR. KERR: Objection.

10 BY MS. EATON:

11 Q. Do you know?

12 MR. KERR: Misstates --
13 mischaracterizes testimony.

14 A. I reported to the board the results
15 of mediation as it progressed, and they
16 suggested that I continue on and authorized me
17 to continue on with the FGIC settlement.

18 Q. At the time you got the authorization
19 from the board to execute the settlement, had
20 you seen a physical copy of a draft settlement
21 agreement?

22 A. I don't recall.

23 Q. Did you have an understanding at that
24 time as to what the material terms of the
25 agreement were to be?

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1 L. Kruger

2 A. Yes, I did.

3 Q. Did those material terms change in
4 any way between the time that you received
5 authorization from the board of directors to
6 sign the document agreement and when you
7 actually signed the agreement itself?

8 MR. KERR: Objection to form.

9 A. Not materially, to my mind.

10 Q. What do you mean by that?

11 A. There were changes to the settlement
12 agreement after May 23rd, I believe, but I
13 believe that they were inconsequential. I
14 don't recall what they were.

15 Q. During the period of time between the
16 date where you got authorization to sign the
17 agreement and when you actually signed the
18 agreement -- let me rephrase that.

19 During the period of time when you
20 received authorization from the board to sign
21 the agreement and May 23rd, were there any
22 material changes to the agreement or draft --

23 A. No.

24 Q. -- agreement during that period?

25 A. No.

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1 L. Kruger

2 Q. Okay.

3 So, what you -- in other words, what
4 you had authorization to sign, whenever you got
5 that authorization, was essentially the same
6 deal that you actually signed?

7 MR. KERR: Objection to form.

8 A. Yes.

9 Q. Is it correct that the only two
10 documents that you saw reflecting the agreement
11 or potential agreement were the physical
12 document that you signed, the agreement itself
13 that we've marked as Kruger Exhibit 1, and the
14 term sheet that you referenced earlier in your
15 testimony?

16 MR. KERR: Objection.

17 A. You're talking just about documents;
18 correct?

19 Q. Yes.

20 A. That's correct.

21 Q. So the only two documents that you
22 saw that reflected the agreement, the potential
23 agreement, were those two documents, namely,
24 Kruger Exhibit 1 and the term sheet that you
25 referenced previously?

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1 L. Kruger
2 MR. KERR: Objection.
3 A. I'm trying to answer the question,
4 but in terms of documents, that's correct.
5 Q. How about in terms other than
6 documents?
7 A. Well, there were always conversations
8 during mediation about various aspects of the
9 mediation.
10 Q. Including with respect to this
11 particular agreement or potential agreement?
12 A. Yes.
13 Q. But those discussions did not take
14 place before early April, if I understood your
15 testimony?
16 MR. WYNNE: Objection.
17 Mischaracterizes testimony.
18 A. That's not what I said. I think I
19 said there were discussions in March, as I
20 recall.
21 Q. You're right. I apologize.
22 How many times during the mediation
23 process was the prospect of a FGIC settlement
24 discussed?
25 A. I don't recall that.

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1 L. Kruger
2 Q. Do you remember who discussed that
3 issue? Just names, not what they said.
4 A. Who discussed that issue with me?
5 Q. At the mediation. During the
6 mediation sessions -- let's back up.
7 During the mediation sessions, the
8 subject of an agreement or prospective
9 agreement with FGIC was discussed; correct?
10 A. Yes.
11 Q. And it was discussed more than one
12 time?
13 A. Yes.
14 Q. You can't remember how many times?
15 A. Correct.
16 Q. Do you remember who discussed that
17 issue during those sessions?
18 MR. KERR: Objection.
19 Go ahead.
20 A. Judge Peck.
21 Q. Anyone else?
22 A. Counsel for the trustees.
23 Q. Anyone else?
24 A. Not that I recall.
25 Q. When you referred to "counsel for the

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1 L. Kruger
2 trustees," who were you referring to?
3 A. Glenn Siegel at Dechert.
4 Q. Anyone else?
5 A. I don't recall anybody else.
6 Q. How about Michael Johnson, did he
7 discuss that issue at all during the sessions?
8 A. Not with me.
9 Q. How about Mark Kotlick (phonetic)?
10 A. Not with me.
11 Q. Do you know whether any of those
12 individuals discussed the FGIC settlement or
13 potential FGIC settlement outside of these
14 mediation sessions?
15 A. I have no idea.
16 Q. Did you ever have any discussions
17 with -- strike that.
18 Did you participate in mediation
19 sessions outside of the presence of Judge Peck?
20 A. Yes.
21 Q. And during any of those sessions was
22 the subject of the FGIC Settlement Agreement
23 discussed?
24 A. Yes.
25 Q. Who was present at those discussions?

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1 L. Kruger
2 MR. EGGERMANN: I'm going to
3 interpose an objection, in my view of the
4 dynamics that occurred during the mediation
5 were probably within the ambit of the
6 court's order. And a lot of the questions
7 that are being asked seems to be designed
8 to elicit the dynamics which, to me, are
9 not far off from the substance of the
10 mediation.
11 BY MS. EATON:
12 Q. Would you answer the question,
13 please, Mr. --
14 A. Do you want to repeat it again for
15 me.
16 MS. EATON: Could you read the
17 question back, please.
18 (The Record was Read.)
19 BY MS. EATON:
20 Q. Who was present at those discussions?
21 A. My counsel. In each session, I don't
22 recall. My counsel certainly in each session.
23 Q. Was counsel for any of the trustees
24 present during those discussions?
25 MR. KERR: Objection.

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1 L. Kruger
2 A. I believe that counsel for the
3 trustees may have been present during some of
4 those sessions.
5 Q. Was that Mr. Siegel that you're
6 referring to?
7 A. Yes.
8 Q. By the way, was Mr. Siegel
9 representing all of the trustees during those
10 discussions, do you know?
11 A. I have no idea.
12 Q. Well, did you have a sense of what
13 his role was?
14 MR. KERR: Objection.
15 A. No.
16 Q. You had no idea one way or the other
17 whether he was speaking only on behalf of the
18 Bank of New York or anybody else?
19 MR. KERR: Objection.
20 A. I don't know.
21 Q. You didn't inquire?
22 A. No.
23 Q. It didn't matter to you?
24 A. No.
25 MR. KERR: Objection. Come on.

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1 L. Kruger
2 BY MS. EATON:
3 Q. Did you have any discussions about
4 the -- prior to May 23, 2013, did you have any
5 discussions with anyone, apart from your
6 outside counsel, about the commutation aspect
7 of the FGIC Settlement Agreement?
8 A. Yes.
9 Q. Who did you have those discussions
10 with?
11 A. Judge Peck.
12 Q. So you discussed the commutation
13 aspect of the agreement with Judge Peck?
14 A. Yes.
15 Q. Did you discuss the commutation
16 aspect of the agreement with anyone else,
17 again, leaving the debtor's counsel aside?
18 A. Unsecured Creditors' Committee
19 counsel.
20 Q. Who was that?
21 A. Kramer Levin.
22 Q. Anyone else?
23 A. I think not.
24 Q. How about Cathy Patrick? Did you
25 ever discuss that issue with her?

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1 L. Kruger
2 A. I don't recall.
3 Q. So maybe you did, maybe you didn't;
4 you just don't remember?
5 MR. KERR: Objection.
6 BY MS. EATON:
7 Q. I'm trying to clarify whether you
8 don't remember that having happened or you
9 don't remember one way or the other?
10 A. I don't remember one way or the
11 other.
12 Q. Was this more than one discussion,
13 was it one discussion, do you recall?
14 A. Is your question how often I spoke to
15 Cathy Patrick?
16 Q. No. We were discussing whether you
17 had had any discussions about the commutation
18 aspect of the settlement agreement. And I
19 asked you with whom did you have those
20 discussions, and you named a variety of people.
21 Was there more than one such
22 discussion?
23 A. Yes.
24 Q. And were the same people present at
25 each of those discussions?

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1 L. Kruger
2 A. Certainly Unsecured Creditors'
3 Committee counsel, my own counsel.
4 Q. Okay.
5 But not Judge Peck?
6 A. I think you asked whether or not
7 these were conversations outside of the
8 presence of Judge Peck.
9 Q. Actually, that's not my --
10 A. I'm confused.
11 Q. Okay. That's fine.
12 A. But if your question was Judge Peck
13 present at those.
14 Q. Yes.
15 A. Sometimes yes, sometimes no.
16 Q. Sometimes yes, sometimes no. Okay.
17 During those conversations when Judge
18 Peck was not present, what did you discuss with
19 the others about the commutation aspect of the
20 FGIC Settlement Agreement?
21 MR. KERR: I'm going to object, and I
22 guess we -- that is within the
23 confidentiality order of the mediation.
24 And I'll direct the witness not to
25 answer.

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1 L. Kruger
2 BY MS. EATON:
3 Q. Did you have any discussions about
4 any aspect of the FGIC Settlement Agreement
5 outside the mediation process, as you defined
6 it earlier in your testimony?
7 A. No.
8 Q. Was every discussion that you had
9 about the FGIC Settlement Agreement part of the
10 mediation process, so far as you understand?
11 A. I believe so.
12 Q. And that would include the
13 discussions that you had with the board of
14 directors of the debtor's, is that part of the
15 mediation process, too?
16 A. I believe so.
17 Q. Did you have any discussions about
18 the plan support agreement outside of the
19 mediation process?
20 A. No.
21 Q. Did you have any discussions with
22 anybody about the Chapter 11 cases more
23 generally outside of the mediation process?
24 MR. KERR: Objection. I'll let him
25 answer this question, but this deposition

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1 L. Kruger
2 is about the FGIC settlement, not about
3 border plan issues.
4 So you can answer that question if
5 you can.
6 THE WITNESS: Could you read it for
7 me.
8 (The Record was Read.)
9 A. Other than my counsel, no.
10 Q. Did you draw any distinction in your
11 own mind between discussions during this period
12 of time, that is, between the time you were
13 appointed as chief restructuring officer and
14 May 23, 2013?
15 Let me back up so I get a clean
16 question.
17 My question that I'm about to ask you
18 relates to the period between the time that you
19 were appointed as chief restructuring officer
20 and May 23, 2013.
21 Okay?
22 A. Okay.
23 Q. That's the time period we're talking
24 about.
25 Did you draw any distinction in your

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1 L. Kruger
2 own mind between discussions that were part of
3 the mediation process and discussions that were
4 not part of the mediation process?
5 A. I think I had mediation conversations
6 and conversations with my counsel and advisors
7 and nothing else.
8 Q. And they were all part of the
9 mediation process?
10 A. I believe so.
11 Q. And I may have asked you this
12 question before. If I did, I apologize, but
13 even if I did, I don't think I quite got an
14 answer.
15 You used the phrase "mediation
16 process." What does that phrase mean to you?
17 A. It meant the process initiated by the
18 court who appointed Judge Peck as a mediator,
19 and meetings both with Judge Peck and without
20 Judge Peck as part of the process seeking a
21 global resolution of the issue.
22 Q. So would it be fair to say anything
23 that you discussed that had any relation to a
24 potential resolution of a Chapter 11 cases fell
25 within the rubric of the mediation process?

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1 L. Kruger
2 A. I believe so.
3 Q. You had no role in negotiating any of
4 the terms of the FGIC Settlement Agreement; is
5 that correct?
6 A. That is correct.
7 Q. What analysis, if any, did you
8 undertake on behalf of the debtors to determine
9 whether the FGIC Settlement Agreement was in
10 their best interest?
11 A. Well, I was aware of the fact that
12 the FGIC Settlement Agreement was part of the
13 global settlement agreement reached by the
14 various parties who were parties to the
15 mediation process.
16 And I recognized in reaching the
17 conclusion that I reached on behalf of the
18 debtors, which is the respective that I have
19 with respect to these issues, that reducing the
20 claims that might be asserted against the
21 debtors both by FGIC and by the trusts was a
22 significant step forward on behalf of the
23 debtor's estates, and as part of the overall
24 global settlement it enabled us to both achieve
25 an Ally contribution of significance, enabled

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1 L. Kruger
2 us to avoid significant litigation with
3 respect to the FGIC and the trusts, enabled us
4 to come to the conclusion where we might
5 actually accomplish a reorganization plan and
6 have that confirmed, rather than the
7 alternative, which looked to me to be an
8 endless litigation at great cost to the estate,
9 no Ally contribution and a diminution of value
10 to the creditors generally of the estates.

11 Q. Did anyone on behalf of the debtors
12 perform any kind of economic analysis of the
13 impact of the FGIC Settlement Agreement?

14 A. Sure.

15 Q. Who did that?

16 A. FTI and Centerview, my financial
17 advisors and the debtors.

18 Q. Anyone else?

19 A. No.

20 Q. Did FTI analyze the impact of the
21 FGIC settlement agreement on anyone other than
22 the debtors?

23 MR. KERR: I'm not sure I understood
24 the question.

25 Do you understand the question?

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1 L. Kruger
2 A. Why don't you repeat the question so
3 I can answer it.

4 MR. KERR: I'm not sure I understand
5 the question.

6 BY MS. EATON:

7 Q. You indicated that FTI and Clearview
8 undertook an analysis of the FGIC Settlement
9 Agreement with respect to its impact on the
10 debtors; right?

11 MR. KERR: Objection.

12 Mischaracterizes the testimony.

13 BY MS. EATON:

14 Q. Is that incorrect, Mr. Kruger?

15 A. Why don't you go back and read my
16 original question and my answer.

17 Q. What did FT --

18 A. I don't want to speculate as to
19 whether I answered the second one.

20 Q. Fine.

21 What did FTI -- what work did FTI
22 perform for on behalf of the debtors with
23 respect to FGIC Settlement Agreement?

24 MR. KERR: Objection. Mr. Kruger,
25 let me just state my objection.

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1 L. Kruger

2 Work that FTI was doing on behalf of
3 the debtors is both subject to work product
4 and potentially attorney-client
5 communications with counsel, and may be
6 subject of the confidentiality order.

7 So in answering this question, if you
8 could describe in very general terms
9 whether they did or not, but without giving
10 the particulars, I'll let you answer the
11 question.

12 A. Well, they produced -- I guess what I
13 would say is that they produced analysis of
14 various aspects of the creditor committees
15 claims, including the FGIC settlement, as part
16 of the mediation process.

17 Q. Is that reflected in any written
18 document?

19 A. I think so.

20 Q. And that's a document that you saw?

21 A. As part of the mediation process,
22 yes.

23 Q. Okay.

24 Was there more than one iteration of
25 that document?

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1 L. Kruger

2 A. I don't recall.

3 Q. What work did Centerview perform
4 by -- for or on behalf of the debtors in
5 connection with the FGIC Settlement Agreement?

6 MR. KERR: Again, the same --
7 debtor's view is that the work that
8 Centerview was doing is work product
9 potentially subject to privilege and
10 subject to confidentiality.

11 So if you could describe in just
12 general terms if they -- what you recall if
13 anything they did, that's fine, but nothing
14 more than that.

15 A. I'm not sure that they produced a
16 document.

17 Q. Did either FTI or Clearview perform
18 any analysis of the amount of the commutation
19 payment provided for under the FGIC Settlement
20 Agreement?

21 A. In looking at -- looking at
22 allocations of recoveries for creditors, we
23 took into consideration commutation payment,
24 but we did not analyze whether there was a
25 correct number or not a correct number. That

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1 L. Kruger
2 was not our purview.
3 Q. You undertook no analysis of whether
4 the amount of the commutation payment was
5 significant from the point of view of persons,
6 entities other than the debtors; correct?
7 MR. KERR: Objection.
8 A. We did not undertake any analysis
9 like that.
10 Q. Did you discuss that issue with
11 anyone?
12 MR. KERR: You can answer that
13 question -- which issue are you talking
14 about?
15 MS. EATON: The amount of the
16 commutation payment provided for under the
17 FGIC Settlement Agreement.
18 MR. KERR: Objection. Asked and
19 answered.
20 A. The answer is no.
21 Q. Did you form a view with respect to
22 the adequacy of the amount of the commutation
23 payment?
24 A. No.
25 Q. Were you aware at any point of

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1 L. Kruger
2 whether Duff & Phelps was performing an
3 analysis of the terms of the FGIC Settlement
4 Agreement for the trustees?
5 MR. KERR: Objection.
6 BY MS. EATON:
7 Q. Do you know that was going on?
8 A. No.
9 Q. Did you know that the trustees had
10 engaged Duff & Phelps?
11 A. Yes.
12 Q. And how did you become aware of that?
13 A. Because I got to see some of their
14 bills.
15 Q. Apart from that, did you know
16 anything about what they were doing?
17 A. No.
18 Q. Did the bills reflect the kind of
19 work that they were doing?
20 A. I did not see any details.
21 Q. They were undetailed invoices?
22 A. Besides not seeing them --
23 Q. Did you approve --
24 A. -- I was just aware of the amounts.
25 Q. Did you have any responsibility for

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1 L. Kruger
2 approving those amounts?
3 A. No.
4 Q. Well, how did you come to get the
5 bills?
6 A. I heard some discussions with my
7 counsel with respect to the size of their
8 bills.
9 Q. Did you discuss the size of the
10 Duff & Phelps's bills with anyone other than
11 your counsel?
12 A. No.
13 Q. Did you discuss it with the board of
14 directors?
15 A. No.
16 Q. Was the size of the Duff & Phelps's
17 bills of any concern to the debtors?
18 MR. KERR: Objection. I'm going to
19 direct him not to answer on the grounds of
20 privilege.
21 MS. EATON: It's a "yes" or "no"
22 question. How can you direct him not to
23 answer the question?
24 MR. KERR: My direction stands. You
25 want to ask him if he had a concern, that's

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1 L. Kruger
2 fine.
3 BY MS. EATON:
4 Q. Who paid Duff & Phelps's bills, do
5 you know?
6 A. No, I'm not sure.
7 Q. It wasn't the debtors?
8 A. I don't know. I think it may have
9 been.
10 Q. I see.
11 Who had -- in your role as CRO, were
12 you responsible for approving vendor bills?
13 A. No.
14 Q. Who was, at the --
15 A. I don't know.
16 Q. Would you review, in your capacity as
17 CRO of the debtor's, would you review any
18 reports or whatnot about vendor payments?
19 MR. KERR: I just want to read that
20 question.
21 Objection to form.
22 MS. EATON: I think he doesn't like
23 the phrase "whatnot" that I included in my
24 question, so I guess I have to rephrase.
25

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1 L. Kruger
 2 BY MS. EATON:
 3 Q. What responsibility, if any, did you
 4 have in your capacity as chief restructuring
 5 officer of the debtor's with respect to the
 6 payment of vendor bills?
 7 MR. KERR: Objection. Asked and
 8 answered.
 9 A. I have not reviewed vendor bills.
 10 Q. And you did not review the Duff &
 11 Phelps's bills?
 12 A. No.
 13 Q. But you were aware of the amount?
 14 A. No.
 15 Q. Well, you were aware of generally of
 16 the size of those bills?
 17 A. No.
 18 Q. I take it you never saw any analysis
 19 that Duff & Phelps had performed?
 20 A. Correct.
 21 Q. Okay.
 22 What about Lazard? Do you know what
 23 Lazard's role was in connection with the --
 24 A. No, I do not.
 25 Q. Did you ever see any analysis

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1 L. Kruger
 2 performed by Lazard --
 3 MR. KERR: Objection. In connection
 4 with this?
 5 MS. EATON: You objected before I had
 6 finished my question, so --
 7 MR. KERR: I apologize.
 8 MS. EATON: That's okay.
 9 BY MS. EATON:
 10 Q. Did you see any analysis performed by
 11 Lazard relating in any way to the FGIC
 12 Settlement Agreement?
 13 A. I did not.
 14 Q. Were you aware of whether Lazard was
 15 performing such an analysis?
 16 A. I was not.
 17 Q. Were you aware of whether Lazard was
 18 performing any analysis related to the planned
 19 support agreement?
 20 A. No.
 21 Q. Were you aware of whether Lazard was
 22 performing any analysis with respect to the
 23 FGIC rehabilitation plan?
 24 A. No.
 25 Q. And I take it from your answers that

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1 L. Kruger
 2 you never saw any analysis that Lazard prepared
 3 with respect to any of those subjects?
 4 A. Correct.
 5 Q. And I take it from that also that you
 6 have no idea one way or another whether
 7 Lazard's conclusions were with respect to those
 8 subjects?
 9 A. Correct.
 10 Q. You didn't learn it from anybody else
 11 or a discussion, for example?
 12 A. No, I did not.
 13 Q. Okay.
 14 MS. EATON: This will be Kruger
 15 Exhibit 2.
 16 (Kruger's Exhibit 2, Document
 17 entitled Declaration of Lewis Kruger, was
 18 marked for identification.)
 19 (A Discussion was Held off the
 20 Record.)
 21 MS. EATON: This is a document
 22 entitled, "Declaration of Lewis Kruger in
 23 Support of Debtor's Motion for an Order
 24 under Bankruptcy Code Sections 1 through 5A
 25 and 363B Authorizing the Debtors to enter

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1 L. Kruger
 2 into and Perform under a Planned Support
 3 Agreement with Ally Financial, Inc., the
 4 Creditors' Committee and Certain Consenting
 5 Claimants."
 6 BY MS. EATON:
 7 Q. Do you recognize Kruger Exhibit 2,
 8 Mr. Kruger?
 9 A. Yes, I do.
 10 Q. This is your declaration?
 11 A. Yes, it is.
 12 Q. And you were aware that this
 13 declaration was filed with the Bankruptcy Court
 14 in connection with the Chapter 11 cases?
 15 A. Yes.
 16 Q. And did you read this declaration
 17 carefully before you signed it?
 18 A. Yes, I did.
 19 Q. And, to the best of your knowledge,
 20 is there anything inaccurate or untrue in this
 21 declaration?
 22 A. Not that I am aware of.
 23 Q. Okay.
 24 Now, turning your attention, first of
 25 all, to paragraph 2, which is on unnumbered

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1 L. Kruger
2 page 1 of Exhibit 2.
3 Do you have that?
4 A. Yes.
5 Q. It says there, "I offer this
6 declaration to show that the debtor's decision
7 to enter into the plan support agreement was a
8 sound exercise of business judgment."
9 Do you see that?
10 A. Yes, I do.
11 Q. Is it the case that the
12 debtors -- well, let me back up.
13 Who exercised -- who at the debtor's
14 exercised the business judgment to enter into
15 the planned support agreement?
16 MR. KERR: And I'm going to object at
17 this point. The plan support agreement has
18 already been approved by the court. You
19 know that. That's not what this deposition
20 is about.
21 I don't know why you're asking
22 Mr. Kruger about a plan support agreement
23 that's already been approved. I'll give
24 you some latitude here, but you're using up
25 your time asking him not about the FGIC

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1 L. Kruger
2 settlement but about a plan support
3 agreement that has already been vetted and
4 approved by the court, so --
5 MS. EATON: I need to register my
6 objection to Mr. Kerr's speaking objection,
7 which he should know is completely
8 improper.
9 BY MS. EATON:
10 Q. Could you please answer my question,
11 Mr. Kruger?
12 A. My business judgment.
13 Q. Not the board of directors?
14 A. Both. They --
15 Q. So the board of directors exercised
16 their business --
17 A. They exercised their judgment by
18 authorizing me to proceed with the FGIC
19 settlement. I think I've said that before.
20 It's still true.
21 Q. This is about the plan support
22 agreement, sir. So let me just get -- let's
23 get a clean question and answer on the record.
24 I've drawn your attention to the
25 first sentence of paragraph 2 of your

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1 L. Kruger
2 declaration. And the question is: Did the --
3 who at the debtor's exercised their business
4 judgment in determining to enter into the plan
5 support agreement?
6 A. I did.
7 Q. And did you, likewise, exercise your
8 business judgment in determining on behalf of
9 the debtor's to enter into the FGIC Settlement
10 Agreement?
11 A. Yes, I did.
12 Q. What was the -- strike that.
13 Now, please turn to paragraph 14 of
14 your declaration. Do you have that before you?
15 A. Yes, I do.
16 Q. That paragraph reads as follows.
17 Quote, "Each of the creditor groups was
18 required to participate in a give and take
19 process through the mediation. In my opinion
20 the process of good-faith negotiations
21 undertaken by all participants resulted in an
22 agreement that is in the best interests not
23 only of the debtor's but also the other
24 mediation participants, including the RMBS
25 trustees and the investors in the RMBS trusts

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1 L. Kruger
2 and all other creditors of the debtor's
3 estates," period, close quote.
4 Do you see that?
5 A. Yes, I do.
6 Q. What was your basis for testifying
7 that the agreement was in the best interests of
8 the investors of the RMBS trusts?
9 MR. KERR: And I'm going to, again,
10 object that your questioning relates to the
11 plan support agreement. And I think it's
12 improper. Mr. Kruger can answer, but I
13 think this is an improper inquiry in this
14 deposition.
15 MS. EATON: I disagree.
16 BY MS. EATON:
17 Q. Please answer the question,
18 Mr. Kruger.
19 A. In my opinion, looking at it from the
20 perspective of as chief restructuring officer
21 of the debtor's estates, and taking into
22 consideration all the other interests of the
23 interested parties, I believe that the
24 combination of the work that had been done
25 during the mediation process under Judge Peck's

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1 L. Kruger
2 direction, together with the Ally contribution
3 and -- resulted in an availability of funds for
4 all parties far greater than would have been
5 the case had there been no global plan
6 settlement, no PSA, and the result would have
7 been, had there not been, significant
8 litigation among the creditors, among
9 themselves, creditors and the debtor, no Ally
10 contribution.

11 And my personal opinion would be and
12 my business judgment was that if we ended up in
13 that situation, there was a very little
14 likelihood of a distribution to creditors for
15 years to come and that this estate would be
16 diminished significantly by the cost of that
17 litigation.

18 So, for me, it was very easy to think
19 this transaction was in the best interest, both
20 of the -- of all of the creditors of the
21 debtor's estates, as well as the investors.

22 Q. And by "transaction" you mean all of
23 the transactions contemplated by what you've
24 defined in your declaration in paragraph 5 as
25 the agreement; right?

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1 L. Kruger
2 answered.

3 A. I consulted both with my counsel, my
4 advisors, Unsecured Creditors' Committee
5 counsel, their advisors. I claim to the
6 conclusion which I just restated, which is that
7 I believe that the benefits for the
8 participants in the estates is far greater as a
9 result of the global settlement provided for in
10 paragraph 5, as you described it, than the
11 alternatives would have been for those same
12 creditors.

13 Q. But you did not consult with either
14 the investors in the RMBS trusts or anyone
15 representing the investors in the RMBS trusts;
16 correct?

17 MR. KERR: Objection.

18 A. As part of the global mediation
19 process, over the course of the months I had
20 presentations made to me by various of the
21 parties to the mediation and learned from those
22 presentations the views of the various
23 participating parties. That informed me and
24 helped my decision-making process.

25 Q. Who was representing the interests of

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1 L. Kruger
2 A. Yes.
3 Q. In other words, the plan support
4 agreement, the planned term sheet, and the
5 supplemental term sheet?

6 A. Correct.
7 Q. And you formed a business judgment,
8 if I understand your testimony correctly, that
9 that agreement, comprised of at least those
10 three elements, was in the best interests of
11 the investors in the RMBS trusts?

12 A. Correct.
13 Q. But you never did any analysis of the
14 impact of that agreement on those investors;
15 correct?

16 MR. KERR: Objection.
17 Mischaracterizes testimony. He testified
18 what he did.

19 A. Want to repeat the question.
20 Q. I'll ask a new question.

21 What analysis, if any, did you do of
22 the impact of the agreement defined in
23 paragraph 5 of your declaration on the
24 investors of the RMBS trusts?

25 MR. KERR: Objection. Asked and

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1 L. Kruger
2 the investors in the RMBS trusts during those
3 discussions you just referenced?

4 A. I assumed the trusts do that.
5 Q. But you didn't know?
6 A. No.
7 Q. Did you actually speak with anyone
8 representing the trusts about the impact of the
9 agreement on the investors in the RMBS trusts?

10 A. No.
11 Q. You spoke, instead, with your
12 counsel, the debtor's advisors and advisors to
13 the creditors' committee?

14 MR. KERR: Objection.
15 Mischaracterizes testimony.
16 BY MS. EATON:

17 Q. Isn't that right?
18 MR. KERR: Objection.
19 A. Over the course of the months, I
20 spoke with any of the mediation participants.
21 Q. There was nobody representing the
22 investors in the RMBS trusts, the wrapped
23 trusts at the mediation; isn't that true?
24 MR. KERR: Objection.
25 A. I'm not sure I understand your

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1 L. Kruger
 2 question. If your question -- I'm not sure I
 3 understand your question.
 4 Q. Who, if anyone, represented the
 5 interests of investors in the FGIC wrapped RMBS
 6 trusts at the mediation?
 7 MR. KERR: Objection.
 8 A. I believe the trustees do that.
 9 Q. But you never spoke to the -- if I
 10 understand your testimony correctly, you never
 11 spoke with those people about the impact of the
 12 agreement on investors in the RMBS trusts?
 13 A. That's correct.
 14 Q. You spoke, instead, I think you said
 15 with other people?
 16 A. Uh-huh.
 17 Q. And none of those other people were
 18 representing the interests of those investors;
 19 isn't that so?
 20 A. Correct.
 21 Q. So with respect to the interests of
 22 investors in the FGIC wrapped securities, what
 23 was the basis for your sworn conclusion that
 24 the agreement was in their best interests?
 25 A. Because I thought that --

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1 L. Kruger
 2 MR. KERR: Objection. Asked and
 3 answered several times.
 4 Tell her again.
 5 BY MS. EATON:
 6 Q. Just -- I haven't. It's with respect
 7 to the -- this specific question is with
 8 respect to the interests of investors in the
 9 FGIC wrapped securities. Okay.
 10 What was the basis for your
 11 conclusion set forth in the declaration that
 12 you swore to that was signed with the court
 13 that the agreement was in their best interests?
 14 MR. KERR: Objection. Asked and
 15 answered.
 16 A. That in my review of all of the facts
 17 and circumstances arising all of the mediation,
 18 I believed that the global settlement produced
 19 a result for every creditor far better than the
 20 alternatives. And I include the Ally
 21 settlement and weigh that against the prospect
 22 of endless litigation, administration of the
 23 estate, no Ally contribution, I conclude that
 24 the result of the global settlement agreement
 25 was for the benefit of every creditor of the

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1 L. Kruger
 2 estate.
 3 Q. Were those investors creditors of the
 4 estate?
 5 A. No. They're investors in the RMBS
 6 trusts.
 7 Q. Right.
 8 So, again, what was the basis for
 9 your conclusion that the agreement was in the
 10 best interests of that group of people --
 11 wait -- that group of people who we agree were
 12 not among the creditors of the estate?
 13 MR. KERR: Objection. Asked and
 14 answered.
 15 A. I still believe, and I'll say it
 16 again, that for everybody, including the
 17 investors in the RMBS trusts, had there been
 18 no -- is if there is no global settlement and
 19 litigation ensues with respect to the
 20 inter-creditor issues and there is no Ally
 21 contribution and passage of time and the cost
 22 of that litigation, there will be a much lesser
 23 recovery for all participants, including the
 24 investors in the RMBS trusts.
 25 Q. Any other basis for the conclusion

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1 L. Kruger
 2 you swore to in your declaration we've marked
 3 as Kruger Exhibit 2?
 4 A. No.
 5 MR. KERR: Mary, we've been maybe
 6 we've been going about an hour and a half,
 7 when you come to a point, we can maybe just
 8 take a five-minute break.
 9 MS. EATON: If you'd like to take a
 10 break now, that would be fine.
 11 MR. KERR: Sure. Let's just take a
 12 break.
 13 (Recess taken from 11:22 a.m. to
 14 11:30 a.m.)
 15 BY MS. EATON:
 16 Q. Did you ever discuss with Judge Peck
 17 who the -- the prospect of having other people
 18 participate in the mediation?
 19 A. No.
 20 Q. Do you know who decided which
 21 constituencies were permitted to -- sorry --
 22 permitted to participate in the mediation?
 23 A. Judge Peck.
 24 Q. Would you agree that the FGIC
 25 Settlement Agreement was a critical component

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1 L. Kruger
2 of the agreement referenced in the declaration
3 we've marked as Kruger Exhibit 2?

4 MR. KERR: Objection.

5 A. It was one of many elements of the
6 global settlement.

7 Q. Okay.

8 But do you agree that it was a
9 critical component of the global settlement?

10 MR. KERR: Objection.

11 A. Each consenting creditor was a
12 critical part of the transaction.

13 Q. So --

14 (Kruger's Exhibit 3, Declaration of
15 Lewis Kruger, was marked for
16 identification.)

17 BY MS. EATON:

18 Q. Let's take a look at the document
19 that we've marked as Kruger Exhibit 3, which is
20 another declaration you filed in these Chapter
21 11 cases entitled, "Declaration of Lewis Kruger
22 in Support of Debtor's Motion Pursuant to
23 Federal Rules of Bankruptcy Procedure 9019 for
24 the Approval of the Settlement Agreement among
25 the Debtors, FGIC, for FGIC Trustees and

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1 L. Kruger
2 that the debtors negotiated the settlement
3 agreement at arm's length without undue
4 influence or coercion by any party."

5 Do you see that?

6 A. Yes, I do.

7 Q. Now, it says there that the debtors
8 negotiated the settlement agreement.

9 Do you see that?

10 A. Yes.

11 Q. I may have misunderstood you, but I
12 thought you had testified previously that the
13 debtors did not negotiate the FGIC Settlement
14 Agreement?

15 A. If that's what I said before, that's
16 not accurate. We did.

17 Q. Who negotiated the FGIC Settlement
18 Agreement on behalf of the debtors?

19 A. My counsel and myself.

20 Q. And yourself. Okay.

21 When did you -- at what point in time
22 did you negotiate the terms of the FGIC
23 Settlement Agreement?

24 A. During the process of the mediation.

25 Q. Can you be more precise about --

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1 L. Kruger
2 Certain Institutional Investors."
3 Do you see that?

4 A. Yes.

5 Q. And, again, that is a declaration
6 that you swore; right?

7 A. Yes.

8 Q. And you read it carefully before you
9 signed it?

10 A. Yes, I did.

11 Q. And you don't have any reason to
12 believe that there's anything in that
13 declaration that is not true and accurate, do
14 you?

15 A. Correct.

16 Q. Okay.

17 Now, if you draw your attention to
18 paragraph 2, which appears on page 1 of your
19 declaration, you state, quote, "I offer this
20 declaration to show that the settlement
21 agreement dated May 23, 2013 (the Settlement
22 Agreement) represents a fair and reasonable
23 compromise in connection with certain claims
24 held by Financial Guaranty Insurance Company
25 (FGIC) and the FGIC Trustees, and to attest

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1 L. Kruger
2 about when that occurred?

3 A. During the months of April and May of
4 2013.

5 Q. And while you were negotiating the
6 terms of the FGIC Settlement Agreement, did you
7 see drafts of the agreement?

8 A. Yes.

9 Q. So you saw drafts of the document
10 that we've marked as Kruger Exhibit 1; is that
11 right?

12 MR. KERR: Take a look Kruger
13 Exhibit 1.

14 A. Yes.

15 Q. All right then.

16 So in addition to the two documents
17 you identified earlier in your testimony, that
18 is, the final version of the settlement
19 agreement which is marked as Kruger Exhibit 1
20 and the term sheet that you referenced
21 previously, you saw additional documents
22 regarding the terms or proposed terms of the
23 FGIC Settlement Agreement, true?

24 MR. KERR: Objection.

25 A. I think before the final settlement

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1 L. Kruger
2 agreement was executed, there were drafts
3 before that.
4 Q. In other words, there were more than
5 the two documents --
6 A. There may have been. I don't recall.
7 Q. You don't recall -- is it the case
8 that you don't recall whether you saw documents
9 other than the two documents that --
10 A. I think that's correct.
11 Q. You need to let me finish my
12 question, if you don't mind. Nothing personal.
13 He just needs to get it down.
14 A. Sorry.
15 Q. So now you're not clear whether you
16 saw drafts of it or not?
17 A. Right.
18 Q. Is that right?
19 MR. KERR: Lew, let Ms. Eaton finish
20 her question and then you can -- that way
21 he gets to take it down. I apologize.
22 BY MS. EATON:
23 Q. I'm just trying to find out whether
24 there were other documents. First you said
25 there were only those two. Then you said you

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1 L. Kruger
2 saw another draft of Exhibit 1 --
3 MR. KERR: Let her finish the
4 question.
5 BY MS. EATON:
6 Q. Did you see -- I have to ask you
7 again. Did you see, given the lack of clarity
8 in your testimony, did you see any other --
9 MR. KERR: Objection.
10 MS. EATON: Please don't inter -- you
11 can object after I finish my question.
12 MR. KERR: Don't characterize his
13 testimony that way. Don't do it.
14 Let her ask the question.
15 MS. EATON: He's letting me ask the
16 question. You are not.
17 BY MS. EATON:
18 Q. Did you see any other documents
19 besides the term sheet that you referenced
20 earlier in your testimony and the final version
21 of the FGIC Settlement Agreement?
22 A. I don't think so.
23 Q. Okay.
24 But it is the case that you
25 participated in negotiating the terms of that

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1 L. Kruger
2 agreement; right?
3 A. Correct.
4 Q. Did you participate in negotiating
5 the amount of the commutation payment?
6 A. No.
7 Q. Are there particular aspects of the
8 agreement that you participated in negotiating?
9 MR. KERR: Objection. On that, I am
10 going to direct him not to answer the
11 confidential --
12 BY MS. EATON:
13 Q. Okay.
14 Could you please turn to page 6 of
15 your declaration, paragraph 14.
16 A. Yes.
17 Q. And it reads there, quote, "Following
18 the court's appointment of United States
19 Bankruptcy Judge James M. Peck as mediator and
20 months of arm's length negotiations, the
21 debtors and most of their claim constituencies
22 reached a broad settlement set forth in the
23 global plan agreement. The settlement
24 agreement represents a critical component of
25 the global plan agreement."

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1 L. Kruger
2 Do you see that?
3 A. Yes.
4 Q. So is it, in fact, the case that the
5 FGIC Settlement Agreement was a critical
6 component --
7 A. Yes.
8 Q. -- of the global plan agreement?
9 A. Yes.
10 Q. And the global plan agreement is
11 defined in your declaration as the plan support
12 agreement, the supplemental term sheet, and the
13 plan term sheet; correct?
14 A. Correct.
15 Q. And that's the same agreement that
16 was referenced in -- in the declaration we
17 previously marked as Kruger Exhibit 2, I think?
18 A. Yes.
19 Q. So in that declaration when you
20 stated that the agreement was in the best
21 interests of the investors in the RMBS trusts,
22 you were stating, were you not, that in your
23 view the FGIC Settlement Agreement was in the
24 best interests of those investors?
25 MR. KERR: Objection.

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1 L. Kruger
2 A. Yes.
3 Q. And you've already stated -- I've
4 already asked you and you already answered my
5 question about the basis for your conclusion in
6 that regard.
7 Do you remember that?
8 A. Yes.
9 Q. Do you have anything to add to your
10 answer about the basis for that conclusion?
11 MR. KERR: Objection.
12 A. No.
13 Q. Okay.
14 Let's move on to Kruger Exhibit 4.
15 (Kruger's Exhibit 4, Order Granting
16 Debtor's Motion Pursuant to Rule 9019,
17 was marked for identification.)
18 BY MS. EATON:
19 Q. This is another document that's been
20 filed in connection with these Chapter 11 cases
21 entitled, "Order Granting Debtor's Motion
22 Pursuant to Rule 9019 for Approval of the
23 Settlement Agreement among FGIC, the Debtors,
24 the Trustees and the Institutional Investors."
25 Do you see that?

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1 L. Kruger
2 A. Yes.
3 Q. Have you seen this document before?
4 A. Yes, I have.
5 Q. Did you have any input into its
6 contents?
7 A. No.
8 Q. Did you review the document before it
9 was filed with the court?
10 A. Yes.
11 Q. In reviewing the document, did you --
12 was there anything that you saw that you did
13 not agree with?
14 A. No.
15 Q. Now, you'll notice in paragraph C at
16 page 2, there's a sentence which reads, quote,
17 "The settlement agreement and the transactions
18 contemplated thereby, including the releases
19 given therein, are in the best interests of the
20 debtors, their estates, the creditors, the
21 investors in each trust -- each such trust, the
22 trustee and all other parties in interest."
23 Do you see that?
24 A. Yes.
25 Q. And you agree with that statement?

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1 L. Kruger
2 A. I do.
3 Q. In what respect was the settlement
4 agreement in the best interest of the trustees?
5 A. I assumed -- I shouldn't say I
6 assume. Pardon.
7 It's to the benefit of the trustees,
8 I assume, because they've satisfied their
9 fiduciary duty to their constituency.
10 Q. Do you have any basis to believe that
11 they did so?
12 A. The trustees are among the largest
13 financial institutions in the United States.
14 They were well-represented by counsel and
15 advisors. I can only assume that they acted in
16 the best interests of those whom they represent
17 as trustees.
18 Q. But it's just an assumption on your
19 part; correct?
20 MR. KERR: Objection.
21 A. Well, beyond that, I continue to
22 believe that it's in the best interest of all
23 the parties, including the trustees, that there
24 be a global settlement, that the global
25 settlement has the benefit of the Ally

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1 L. Kruger
2 contribution, eliminates years of struggling in
3 litigation, complex and costly, and results in
4 a recovery for all parties that is far better
5 than the alternative.
6 That, I think, encompasses both the
7 debtors, their estates, their creditors, the
8 investors in each trust, each trust and the
9 trustees.
10 Q. What interest do the trustees, as
11 opposed to the trusts or the investors in the
12 trusts, have in the outcome of this dispute?
13 MR. KERR: Objection.
14 BY MS. EATON:
15 Q. Do you know?
16 A. Well, I assume that they are -- I
17 should not assume.
18 No, I don't.
19 Q. Now, let's turn to Paragraph D, which
20 states, quote, "The trustees acted reasonably
21 in good faith and in the best interest of the
22 investors in each trust and each such trust in
23 agreeing to the settlement agreement," period,
24 close quote.
25 Do you see that?

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1 L. Kruger
2 A. Yes, I do.
3 Q. Do you agree with that statement?
4 A. Yes, I do.
5 Q. On what basis do you agree that the
6 trustees acted reasonably in good faith and in
7 the best interests of the investors in each
8 trust?
9 A. Well, as part of the mediation
10 process led by Judge Peck, the trustees were an
11 important part of that mediation process. As I
12 said, they are among the largest financial
13 institutions in the United States. They're
14 experienced trustees. They have the advice of
15 very competent counsel, financial advisors, and
16 acted -- I saw nothing to persuade me to the
17 contrary.
18 I believe that they were acting in
19 good faith and in the best interests of the
20 investors in each trust in agreeing to the
21 settlement agreement.
22 Q. I thought I heard you testify
23 previously that the only trustee,
24 representative of the trustees that you spoke
25 with was Mr. Siegel?

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1 L. Kruger
2 MR. KERR: Objection. That's not
3 correct. Mischaracterizes testimony.
4 BY MS. EATON:
5 Q. Did you speak with any representative
6 of the trustees other than Mr. Siegel during
7 that process?
8 MR. KERR: You're talking about the
9 mediation process overall; is that your
10 question?
11 BY MS. EATON:
12 Q. Yes.
13 A. Just with -- I'll say no.
14 Q. Okay.
15 So do you have any factual basis for
16 believing that the Bank of New York acted in
17 the best interests of my clients in agreeing to
18 this settlement agreement?
19 MR. KERR: Objection. Asked and
20 answered.
21 BY MS. EATON:
22 Q. Beyond what you've -- beyond what
23 you've already testified to.
24 A. No.
25 Q. I'll be handing you now Exhibit -- a

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1 L. Kruger
2 document we'll mark as Exhibit 5.
3 (Kruger's Exhibit 5, Notice of
4 Filing of Lewis Kruger's First Monthly
5 Fee Report, Compensation for Professional
6 Services Rendered and Reimbursement of
7 Expenses Occurred, was marked for
8 identification.)
9 BY MS. EATON:
10 Q. The document marked as Kruger
11 Exhibit 5 is entitled "Notice of Filing of
12 Lewis Kruger's First Monthly Fee Report,
13 Compensation for Professional Services
14 Rendered, And reimbursement of Expenses
15 Occurred through the period from February 10,
16 2013 through February 28, 2013."
17 A. Uh-huh.
18 Q. Do you recognize this document?
19 A. Yes, I do.
20 Q. These are the fee and expense reports
21 that you would submit, that the debtors would
22 submit periodically to the Bankruptcy Court?
23 A. Right.
24 Q. Okay.
25 Now, if you flip to the second to

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1 L. Kruger
2 last page of Exhibit 5 which is headed
3 Exhibit B.
4 Do you see that it's a chart?
5 A. Oh, yes. Sorry. Uh-huh.
6 Q. It says Project Category
7 Descriptions.
8 Do you see that?
9 A. Yes.
10 Q. Okay.
11 And to the left of the chart there's
12 a heading entitled Project Category, and then a
13 list of six categories.
14 Do you see that?
15 A. Uh-huh.
16 Q. The first of which is Plan Mediation.
17 A. Yes.
18 Q. And the second is Plan General.
19 Do you see that?
20 A. Yes.
21 Q. And the third is RMBS Settlement.
22 Do you see that?
23 A. Yes.
24 Q. And the purpose of these project
25 categories was to allocate to -- let me strike

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1 L. Kruger
2 that.
3 What was the purpose of recording
4 your time under these different categories?
5 MR. KERR: Objection. Assumes facts
6 not in evidence.
7 BY MS. EATON:
8 Q. Did you record your time under these
9 different categories?
10 A. Yes, I did.
11 Q. Why did you do that?
12 A. I thought it would be helpful to give
13 our creditors and other interested parties some
14 sense of how I was spending my time.
15 Q. And how did you differentiate between
16 Category 1, which is Plan Mediation, and
17 Category 2, which is Plan General?
18 A. It's very hard to distinguish between
19 the two of them. I did the best I could and
20 tried to distinguish between those activities I
21 thought were plan mediation directly and others
22 were developing the debtor's plan of
23 reorganization.
24 Q. But there was a distinction in your
25 mind between those two things?

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1 L. Kruger
2 A. A very fuzzy distinction.
3 Q. Well, fuzzy or not, there was a
4 distinction. And when these expense fee and
5 expense reports were submitted, you allocated
6 your time between those two categories, among
7 others; right?
8 MR. KERR: Objection.
9 A. Correct.
10 Q. And that's why, for example, you see
11 on the previous page, which is headed Exhibit
12 A, that you allocated 9 hours of your time to
13 Plan Mediation and 16-1/2 hours of your time to
14 Plan General and 6-1/2 hours of your time to
15 the RMBS Settlement; right?
16 A. Yes.
17 (Recess taken from 11:52 a.m. to
18 11:54 a.m.)
19 (Kruger's Exhibit 6, Document,
20 Bates Nos. FGIC 901933899 through 34122,
21 was marked for identification.)
22 (Kruger's Exhibit 7, Document,
23 Bates Nos. FGIC 901933813 through 33898,
24 was marked for identification.)

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1 L. Kruger
2 (Kruger's Exhibit 8, Document,
3 Bates Nos. FGIC 901933760 through 33812,
4 was marked for identification.)
5 (Kruger's Exhibit 9, Document,
6 Bates Nos. FGIC 901934123 through 34204,
7 was marked for identification.)
8 (Kruger's Exhibit 10, Document,
9 Bates Nos. FGIC 901934258 through 34324,
10 was marked for identification.)
11 BY MS. EATON:
12 Q. Mr. Kruger, in the interest of time
13 during the break we've marked a series of
14 exhibits that's numbers 6 through 10, which
15 you're free to look at as much or as little as
16 you like, but essentially they're a series of
17 e-mails to the ResCap board of directors or the
18 board of directors of the ResCap subsidiaries,
19 attaching materials, including drafts of the
20 PSA and things of that sort.
21 MR. KERR: Could we just identify
22 them so the record is clear.
23 MS. EATON: Sure. I'm happy to do
24 that.
25 So Exhibit 6 is Bates stamped FGIC

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1 L. Kruger
2 901933899 through --
3 (A Discussion was Held off the
4 Record.)
5 MS. JAMES: Exhibit 6 is FGIC 9019
6 Bates 33899 through 34122.
7 Exhibit 7 is FGIC 901933813 through
8 33898.
9 Exhibit 8 is FGIC 901933760 through
10 33812.
11 Exhibit 9 is FGIC 901934123 through
12 34204.
13 And Exhibit 10 is FGIC 901934258
14 through 34324.
15 MR. KERR: Great.
16 BY MS. EATON:
17 Q. Your name is referenced on each of
18 these -- each of these exhibits. And I don't
19 have very many questions to ask you about them.
20 It would be fair to say that these
21 are communications with the board of ResCap and
22 its subsidiaries with respect to the agreement
23 that we've been talking about, the plan support
24 agreement, the term sheet, the supplemental
25 term sheet, and the FGIC Settlement Agreement?

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1 L. Kruger
2 MR. KERR: Objection. You need to
3 look at each document to respond to that
4 question.
5 MS. EATON: If he needs to, he needs
6 to.
7 A. That appears to be correct.
8 Q. And these exhibits reflect what was
9 presented to those two boards with respect to
10 those agreements; correct?
11 MR. KERR: Objection.
12 A. I don't know.
13 Q. A lot of the attachments to these
14 exhibits have been redacted.
15 Are you aware of any presentations in
16 the form of PowerPoint slides or otherwise that
17 were made to the directors with respect to the
18 PSA, the term sheet, the supplemental term
19 sheet, or the FGIC Settlement Agreement?
20 A. No, I am not.
21 Q. Did you have any discussions with
22 anyone at Monarch about the FGIC Settlement
23 Agreement?
24 A. No.
25 Q. The PSA?

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1 L. Kruger
2 A. No.
3 Q. The FGIC rehabilitation proceedings?
4 A. No.
5 Q. Same question with respect to anyone
6 at Stonehill?
7 A. No.
8 Q. Same question with respect to anyone
9 at Bayview?
10 A. No.
11 Q. And the same question with respect to
12 anyone at CQS?
13 A. No.
14 MS. EATON: I'm reserving my rights,
15 but I'm told that other people want to take
16 the seat; so, I'm going to conclude my
17 questions for now, with the understanding
18 that I'm reserving my rights.
19 MR. CARNEY: I'll just stand. I have
20 three questions.
21
22 EXAMINATION BY MR. CARNEY:
23 Q. I'm Michael Carney from McKool Smith,
24 on behalf of Freddie Mac.
25 My first question is: All else being

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1 L. Kruger
2 equal, would you have entered the FGIC
3 Settlement Agreement if it did not contain a
4 FGIC commutation?
5 MR. KERR: Objection.
6 A. I'm not -- I would entered it if the
7 documents defined the releases and a reduction
8 in claims that we got. I assume that was part
9 and parcel of getting a commutation. If there
10 was no commutation and I would not have gotten
11 those releases, there would not have been a
12 settlement.
13 Q. But if you would have gotten releases
14 and everything else but just absent the
15 commutation, would you have entered the
16 settlement agreement?
17 MR. KERR: Objection. Assumes facts
18 not in evidence.
19 BY MR. CARNEY:
20 Q. It's a "yes" or "no" question.
21 A. Can you describe to me one more time
22 what the agreement is.
23 Q. The agreement is all else being
24 equal, everything else is the same, but it does
25 not contain the FGIC commutation, would you

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1 L. Kruger
2 have entered the agreement?
3 A. But it still contains the reduction
4 in claim amounts?
5 Q. Yes.
6 MR. KERR: Objection.
7 MR. WYNNE: Objection. Improper
8 hypothetical.
9 BY MR. CARNEY:
10 Q. You can answer.
11 A. Yes.
12 Q. Okay.
13 And so, in fact, the FGIC commutation
14 aspect itself wasn't important to the debtors,
15 was it?
16 MR. KERR: Objection.
17 Mischaracterizes testimony.
18 A. It was important as part of the
19 global --
20 MR. CARNEY: Are you instructing him
21 not to answer?
22 MR. KERR: It's a highly improper
23 hypothetical question. If you can answer
24 that question not -- recognizing those
25 facts aren't what they are, without

<p style="text-align: center;">Page 102</p> <p>1 L. Kruger 2 disclosing anything from the mediation. 3 A. Want to try your question again. 4 Q. Certainly. 5 The FGIC commutation aspect of the 6 FGIC settlement -- scratch that. 7 The FGIC commutation aspect of the 8 FGIC settlement wasn't important to the 9 debtors, was it? 10 MR. KERR: Objection. 11 Mischaracterizes his testimony. 12 A. It was part of the global settlement, 13 so all of that was important to us. 14 Q. But in itself it wasn't important to 15 the debtors if you would have gotten everything 16 else? 17 MR. KERR: Objection. Improper 18 hypothetical. 19 BY MR. CARNEY: 20 Q. You can answer. 21 A. Yes. 22 Q. Why was the commutation itself 23 important? 24 MR. KERR: Objection. 25 A. I thought -- I'm confused.</p>	<p style="text-align: center;">Page 103</p> <p>1 L. Kruger 2 Q. You said that you would have, had you 3 received everything else in this global 4 settlement, you would have entered it had the 5 FGIC commutation not been a part of it; is that 6 correct? 7 A. From the debtor's perspective. 8 Q. Yes. From the debtor's perspective. 9 A. Assuming the rest of the global 10 settlement stayed in place -- 11 Q. Yes. 12 A. -- and everything else was in place. 13 Q. Yes. 14 A. And I would have the same result in 15 terms of the releases that would have been 16 forthcoming? 17 Q. Yes. 18 A. Sounds fine to me. 19 MR. CARNEY: All right. 20 Those are my questions. Thank you. 21 I'll reserve any time at the end, if 22 there's any left. 23 (A Discussion was Held off the 24 Record.) 25</p>
<p style="text-align: center;">Page 104</p> <p>1 L. Kruger 2 (Kruger's Exhibit 11, Notice of 3 Deposition, was marked for 4 identification.)</p> <p>6 EXAMINATION BY MR. SHORE: 7 Q. Good afternoon, Mr. Kruger. I'm 8 Chris Shore from White & Case, on behalf of the 9 Ad Hoc Group of Junior Secured Notes. 10 I've handed you a document that's 11 been marked as Kruger No. 11. Have you seen 12 that document before? 13 MR. WYNNE: Could you identify it? 14 MR. SHORE: Yes. It's a Notice of 15 Deposition of the Ad Hoc Group calling for 16 a 30(b)(6) witness from the debtors. 17 A. Yes. 18 Q. And are you here today to testify on 19 behalf of each of ResCap, LLC, which I'll call 20 ResCap, LLC, Residential Funding Corporation, 21 which I'll call RSC, and GMAC Mortgage, LLC, 22 which I'll call GMACM. 23 MR. KERR: Mr. Shore, you requested 24 Mr. Kruger to appear at this point here. 25 He's is prepared to testify about the</p>	<p style="text-align: center;">Page 105</p> <p>1 L. Kruger 2 topics, but so -- 3 MR. SHORE: Well, no, I called for a 4 30(b)(6) witness. I asked you who you were 5 going to provide. You said Mr. Kruger. So 6 I'm just -- he's here as a 30(b)(6) witness 7 on behalf of each of those entities; right? 8 MR. KERR: Correct. 9 BY MR. SHORE: 10 Q. Okay. 11 And you're prepared to testify today 12 about each of the topics which are listed on 13 the last page of Kruger No. 11? 14 A. Yes. 15 Q. Okay. 16 Let me clear up an authority issue 17 from some questions from this morning. 18 With respect to GMACM, did you obtain 19 any specific authority from the board of GMACM 20 to negotiate the FGIC settlement? 21 A. The board of -- I don't -- I believe 22 I had the authority under my engagement letter 23 to negotiate the FGIC settlement. In addition 24 to that, the board of ResCap certainly gave me 25 that authority initially.</p>

<p style="text-align: center;">Page 106</p> <p>1 L. Kruger 2 Q. Okay. 3 And with respect to RFC, do you 4 recall getting a specific authorization from 5 the board of RFC to authorize -- authorizing 6 you to negotiate on behalf of RFC with respect 7 to the FGIC claims? 8 A. No. 9 Q. Okay. 10 And with respect to GMACM, did you 11 get a specific authorization from the board of 12 GMACM to execute the FGIC Settlement Agreement? 13 A. No. 14 Q. Okay. 15 And on behalf of ResCap, LLC -- I'm 16 sorry. On behalf of RFC, did you get a 17 specific authorization from that board to 18 execute the FGIC Settlement Agreement? 19 A. I don't know. 20 Q. Did you seek authority or did 21 somebody seek authority on your behalf to sign 22 that agreement, the FGIC Settlement Agreement, 23 on behalf of GMACM and RFC? 24 MR. KERR: Objection. 25 A. I think I had that authority.</p>	<p style="text-align: center;">Page 107</p> <p>1 L. Kruger 2 Q. And that's based upon your engagement 3 letter? 4 A. Yes. 5 Q. Any other thing you're relying upon 6 to give your testimony with respect to 7 authority? 8 A. I would say conversation with the 9 board. 10 Q. Which board? 11 A. The board of ResCap. 12 Q. Okay. 13 Have you ever met with the board of 14 GMACM in these cases? 15 A. I don't know. 16 Q. And do you recall ever meeting with 17 the board of RFC in these cases? 18 A. I don't know. 19 Q. Do you know who is on the board of 20 GMACM? 21 A. No. 22 Q. Do you know who is on the board of 23 RFC? 24 A. No. 25 Q. All right.</p>
<p style="text-align: center;">Page 108</p> <p>1 L. Kruger 2 Referring to 30(b)(6), Topic 2, "Any 3 materials or analysis concerning 4 substantive" -- no, leave that aside. I'm 5 sorry. 6 I want to focus first on your 7 personal diligence with respect to any FGIC 8 claims. 9 To date, have you read any of the 10 FGIC complaints that were filed prepetition? 11 A. I've read one. 12 Q. And which one was that? 13 A. I don't recall which one. 14 Q. And did you read that prior to or 15 after executing the settlement agreement? 16 A. Prior to. 17 Q. And what impact, if any, did your 18 reading of that complaint have on your decision 19 to execute the FGIC settlement agreement? 20 A. It was one of a number of things that 21 I thought about in preparing and executing the 22 FGIC agreement. 23 Q. And how did that play into your 24 decision? 25 A. Well, I read it. It set forth the</p>	<p style="text-align: center;">Page 109</p> <p>1 L. Kruger 2 claims that were being made by FGIC. And those 3 informed me and they were part of the 4 considerations that I had in terms of 5 determining whether we should go forward with 6 the settlement agreement. 7 Q. To date, have you read any of FGIC's 8 proofs of claim? 9 A. I read one of FGIC's proofs of 10 claims, as well. 11 Q. And did you read that prior to or 12 after the determination to settle? 13 A. Prior to. 14 Q. Okay. 15 And did you read any of the RMBS 16 trust claims, proofs of claim and they relate 17 to the FGIC wrapped trusts? 18 A. No, I did not. 19 Q. Okay. 20 And you haven't done that to date? 21 A. No. 22 Q. Did you do any independent legal 23 research into FGIC issues at all? 24 MR. KERR: Objection. 25 A. No.</p>

<p style="text-align: center;">Page 110</p> <p>1 L. Kruger 2 MR. KERR: Are you talking about 3 Mr. Kruger, personally? 4 MR. SHORE: Yes. Personally. I said 5 the, lead-in with all this, I just want his 6 personal diligence. 7 MR. KERR: All right.</p> <p>8 BY MR. SHORE: 9 Q. And have you done any personal legal 10 research into RMBS-related issues? 11 A. No. 12 Q. And did you have any experience in 13 dealing with RMBS-related issues in private 14 practice? 15 A. No. 16 Q. Did you talk to any existing ResCap 17 employees about facts in their possession 18 related to the FGIC complaint or the FGIC 19 proofs of claim? 20 A. No. 21 Q. Have you reviewed any prepetition 22 memoranda regarding the merits of the FGIC 23 claims which have been asserted? 24 MR. KERR: You can answer that "yes" 25 or "no."</p>	<p style="text-align: center;">Page 111</p> <p>1 L. Kruger 2 A. Yes. 3 Q. Okay. 4 And what law firm had prepared that 5 memorandum? 6 A. Morrison & Foerster. 7 Q. And that was a memorandum that they 8 prepared prepetition with respect to the RMBS 9 claims? 10 A. I believe so. 11 Q. Have you reviewed any fact summaries 12 with respect to the claims asserted either in 13 the FGIC complaint that you read or the FGIC 14 proof of claim that you read? 15 A. Fact summaries outside of the content 16 of those two documents. 17 Q. Yes. 18 A. I don't think so. 19 Q. Okay. 20 And have you read any witness 21 interviews or reviewed any witness interviews 22 with respect to any of the facts that fall 23 within those two documents, being the proof of 24 claim that you reviewed and the complaint that 25 you reviewed?</p>
<p style="text-align: center;">Page 112</p> <p>1 L. Kruger 2 MR. KERR: Objection. 3 A. Ask me the question one more time, 4 please. 5 Q. Sure. 6 Have you reviewed any witness 7 interviews or summaries of witness interviews 8 that go to the facts that are alleged either in 9 the FGIC proof of claim or the FGIC complaint 10 that you read? 11 A. At one point I read a Carpenter Lipps 12 presentation, but I don't recall whether they 13 were a witness or -- so that's my answer. 14 Q. And what was the general subject of 15 that presentation? 16 A. The monoline claims. 17 Q. At any time, have you spoken to any 18 FGIC officer, director or employee with respect 19 to the -- either the facts or the law related 20 to the FGIC claims asserted either in the FGIC 21 complaint that you read or the FGIC proof of 22 claim? 23 A. John Dubel. 24 Q. And when did you speak with him? 25 A. During the context of mediation over</p>	<p style="text-align: center;">Page 113</p> <p>1 L. Kruger 2 the course of months. 3 Q. And did you speak with him about 4 underlying facts asserted in the, either the 5 FGIC proof of claim or the FGIC complaint? 6 MR. KERR: Objection. To the extent 7 this was during the mediation, I'm going to 8 direct him not to answer.</p> <p>BY MR. SHORE:</p> <p>9 Q. Are you going to follow that 10 direction? 11 A. Yes. 12 Q. And did you have any discussion about 13 the law underlying the FGIC proof of claim or 14 the FGIC complaint that you read? 15 MR. KERR: Same direction, with 16 respect to which if you can ask about 17 conversations he had with Mr. Dubel, if 18 any, outside the context of the mediation, 19 but within the mediation I'm going to 20 direct him not to answer.</p> <p>BY MR. SHORE:</p> <p>21 Q. Are you going to follow that 22 direction? 23 A. Yes.</p>

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1 L. Kruger

2 Q. And if you had -- so, let me ask this
3 then.

4 Have you had any discussions with
5 anybody who is an officer, director, employee
6 of FGIC outside the context of the mediation?

7 A. No.

8 Q. How about their advisors? Have you
9 spoken to any advisor for FGIC outside of the
10 mediation regarding the FGIC claims?

11 A. No.

12 MR. SHORE: And I take it that the
13 instruction is that to the extent that
14 there were any discussions in connection
15 with the -- within the mediation, no matter
16 what the content was of those discussions,
17 those are going to be the subject of the
18 mediation privilege assertion?

19 MR. KERR: Correct.

20 BY MR. SHORE:

21 Q. Other than your review of the FGIC
22 proof of claim and the FGIC complaint, what
23 other materials did you review in reaching your
24 determination that the settlement agreement was
25 a proper exercise of your business judgment?

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1 L. Kruger

2 the FGIC proof of claim, not the settlement
3 agreement?

4 MR. SHORE: The FGIC proof of claim
5 which is settled in the settlement
6 agreement. Just the FGIC issues.

7 A. Gary Lee, I think. I think Lorenzo
8 Marinuzzi. Maybe Jennifer Marines.

9 Q. Okay.

10 What business people --

11 MR. KERR: Are you through?

12 MR. SHORE: I'm not asking for an
13 exhaustive list. I'm trying to get --

14 A. I'm not sure who at the financial
15 advisors. Probably Mark Ramsey.

16 Q. Okay. Ramsey.

17 What about Puntus?

18 A. Marc Puntus.

19 Q. Okay.

20 And who at the -- who at, either an
21 officer, director, employee of ResCap would be
22 on that team? ResCap, I'm meaning all the
23 debtor entities.

24 A. When you say "on the team," what do
25 you mean by that?

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1 L. Kruger

2 A. I had read presentations by
3 Morrison & Foerster on monoline claims.

4 Q. Okay.

5 How many?

6 A. Some.

7 Q. Anything else? Any other written
8 materials you relied upon?

9 A. I don't think so.

10 Q. Let me ask this question.

11 Did any of your discussions with
12 Mr. Dubel inform your business decision to
13 enter into the settlement agreement?

14 A. No.

15 Q. Okay.

16 Let me understand and clarify another
17 set of issues. Who was on the -- how would you
18 describe the ResCap/FGIC team, that is, the
19 people on your team, both lawyers, advisors,
20 who were responsible for addressing issues
21 related to the FGIC proofs of claim?

22 A. Do you want specific attorneys at
23 Morrison Foerster?

24 Q. Yes. Yes.

25 MR. KERR: This is with respect to

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1 L. Kruger

2 Q. People at any debtor who had a
3 material role in the process of negotiation or
4 in making a determination to enter into the
5 FGIC settlement agreement.

6 A. No one.

7 Q. Other than yourself?

8 A. Other than myself.

9 Q. Okay.

10 And what did you consider to be the
11 MoFo lawyers's role in -- on the FGIC team?

12 A. To render advice to me, to answer
13 questions from me, to review the strengths and
14 weaknesses of the FGIC claims, trustees claims.

15 Q. And is there anything else that you
16 considered their responsibility on that team?

17 A. Well, to engage in the drafting of
18 the settlement agreement, documentation of it.

19 Q. Anything else?

20 A. No, I think that's it.

21 Q. Okay.

22 And what was the role of the
23 financial advisors on that team?

24 A. To review for me the FGIC settlement
25 in the context of the overall global

<p style="text-align: center;">Page 118</p> <p>1 L. Kruger 2 settlement. 3 Q. Did they -- was any part of their 4 responsibility to run permutations on the 5 amounts of FGIC claims under certain scenarios? 6 MR. KERR: Objection. You say "FGIC 7 claims." Just to understand -- 8 MR. SHORE: The claims asserted by 9 FGIC. 10 MR. KERR: Objection to form. 11 A. In the context of the mediation, 12 there were financial presentations which looked 13 at various claims, FGIC and others. 14 Q. Okay. 15 Specifically in connection with your 16 determination to execute the settlement 17 agreement, did they provide you any specialized 18 presentation on claims that were either 19 asserted by FGIC or the RMBS trust with respect 20 to FGIC wrapped trusts? 21 A. No. 22 MR. KERR: Objection to form. 23 BY MR. SHORE: 24 Q. All right. 25 What did you consider your role to be</p>	<p style="text-align: center;">Page 119</p> <p>1 L. Kruger 2 on that team? 3 A. The business person making the 4 decision to go forward or not. 5 Q. And what did you understand to be 6 your role in the negotiation of that business 7 arrangement? 8 A. Just as I said, to be the person on 9 behalf of the debtors to determine whether or 10 not to enter into the agreement. 11 Q. Well, other than review materials 12 that were given to you by either MoFo or the 13 financial advisors, what role did you play in 14 negotiating the FGIC settlement agreement? 15 MR. KERR: Objection. 16 A. I participated in the mediation 17 sessions, which were attended by a cast of, you 18 know, large numbers of people, sort of a 19 swirling kaleidoscope of activity. I was a 20 participant in those. 21 I had discussions with people 22 present, Cathy Patrick among them, and others, 23 counsel for the trustees. 24 Q. Well, let me focus on the time. 25 There came a time when there was a</p>
<p style="text-align: center;">Page 120</p> <p>1 L. Kruger 2 plan support agreement that was executed; 3 right? 4 A. Yes. 5 Q. And, but at that time the FGIC claim 6 amounts had not been set? 7 MR. KERR: Objection. 8 Mischaracterizes his testimony. 9 BY MR. SHORE: 10 Q. Right? 11 A. I'm not sure I'm following the 12 question. 13 Q. Okay. 14 Were the FGIC -- well, let me ask 15 this question. 16 What's your understanding of why the 17 FGIC settlement is being proposed now rather 18 than as part of the plan? 19 A. Because of the rehabilitation 20 process, is my understanding. 21 Q. Is it your testimony that at the time 22 the PSA was signed, all aspects of the FGIC 23 settlement agreement had been negotiated? 24 MR. KERR: Objection. Asked and 25 answered.</p>	<p style="text-align: center;">Page 121</p> <p>1 L. Kruger 2 A. Essentially, yes. 3 Q. Okay. 4 And what was outside that? When you 5 say "essentially yes." 6 MR. KERR: Objection. 7 A. At the time the PSA was executed, 8 there was not a written settlement agreement. 9 Q. So let me focus on that period of 10 time. 11 What role did you play in the post 12 PSA signing with respect to the FGIC settlement 13 agreement? 14 A. Reading of the document that is now 15 called the Settlement Agreement. 16 Q. Okay. 17 Anything else? 18 A. Conversation with my counsel. 19 Q. Did you have any conversations 20 directly with FGIC or any FGIC attorney or 21 representative? 22 A. I don't recall. 23 Q. And did you have any direct 24 communications with any FGIC attorney or 25 representative?</p>

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1 L. Kruger
2 A. I don't think so.
3 Q. What was the role of Judge Peck in
4 the -- in your determination to -- if any, in
5 your determination to execute the FGIC
6 Settlement Agreement?
7 MR. KERR: Okay. Again, I'm just
8 trying to be careful about the
9 confidentiality of the mediation process.
10 I don't want you to reveal what was
11 discussed or whatever in the mediation
12 role.
13 If you can answer that question
14 without doing so. If not --
15 A. I mean, Judge Peck was sort of the
16 person running the mediation process and the
17 agreements that were reached were reached sort
18 of under his process, if you will.
19 So I don't know how else to answer
20 that question.
21 Q. Did Judge Peck provide the debtors
22 with any advice as to what a reasonable FGIC
23 claim amount would be?
24 MR. KERR: Objection. I'm going to
25 direct the witness not to answer the

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1 L. Kruger
2 confidentiality --
3 BY MR. SHORE:
4 Q. Are you going to follow that
5 direction?
6 A. Yes.
7 Q. Okay.
8 Do any of the debtors contend that
9 they relied upon the reviews of Judge Peck with
10 respect to their determination to enter into
11 the FGIC Settlement Agreement?
12 MR. KERR: Objection.
13 A. Only to the extent that Judge Peck
14 was obviously part of the process that reached
15 the global settlement agreement. So to that
16 extent, sort of relied upon his participation.
17 Q. What do you mean by that?
18 A. Just that.
19 Q. You can't provide any further
20 testimony?
21 A. Why don't you reask your question.
22 I'll see if I can answer it.
23 Q. Sure.
24 Is it -- do any of the debtors
25 contend in connection with the motion they

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1 L. Kruger
2 filed for approving the FGIC settlement
3 agreement, that Judge Peck played any
4 substantive role in the determination with
5 respect to the amount of any FGIC claims which
6 were agreed to?
7 MR. KERR: Objection. Again, I think
8 you're invading the confidentiality
9 mediation, and I'm going to direct the
10 witness not to answer.
11 MR. SHERWIN: I'm just asking him yes
12 or no.
13 MR. KERR: And I'm going to direct
14 the witness not to answer that question.
15 BY MR. SHORE:
16 Q. So it's possible that Judge -- that
17 your determination with respect to FGIC claim
18 amounts was based upon a recommendation of any
19 sort from Judge Peck --
20 MR. KERR: Again --
21 Q. -- as to an appropriate amount of the
22 claim?
23 MR. KERR: -- I direct the witness
24 not to answer. And, again, just so I'm
25 clear, based on the confidentiality order

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1 L. Kruger
2 in place respecting the issue.
3 BY MR. SHORE:
4 Q. And you're going to follow that
5 instruction?
6 A. Yes.
7 Q. So what did you rely upon in
8 determining to execute the FGIC Settlement
9 Agreement?
10 A. That the FGIC Settlement Agreement
11 was part of the general overall global
12 settlement that, as I've said before in
13 testimony here today, seemed to me to be an
14 outstanding good result for the various
15 participants in the process and for all
16 creditors of the various estates.
17 And it seemed to be that the
18 alternative of endless litigation among the
19 creditors, the debtor, no Ally contribution and
20 the like, was a much worse alternative for all
21 participants in this process.
22 Q. Let me restate my question.
23 Just what did you rely upon? I take
24 it one thing you relied upon was the -- were
25 the presentations that MoFo was giving?

<p style="text-align: center;">Page 126</p> <p>1 L. Kruger 2 MR. KERR: Objection. 3 A. I relied on a lot of things. That 4 was among them. 5 Q. Okay. 6 That was one. First of all, let's be 7 clear what the -- Morrison & Foerster presented 8 you with presentations and you relied upon them 9 in determining to execute the -- 10 A. No. They -- I sought their -- they 11 told me their views of various issues, 12 strengths and weaknesses of various of the 13 parties's claims. Then I made my own decision 14 as to whether or not to proceed. 15 Q. Good. So let's clear that up. 16 You are not stating that -- that 17 reliance upon counsel is a basis for approving 18 the FGIC motion? 19 MR. KERR: Let me respond to that, 20 because that's really a legal question. 21 We're not asserting a reliance on 22 counsel, defense or however you want to 23 characterize it here. Mr. Kruger made his 24 independent judgment. He has testified -- 25 he has testified about the basis of his</p>	<p style="text-align: center;">Page 127</p> <p>1 L. Kruger 2 independent judgment. 3 MR. SHORE: Okay. 4 MR. KERR: Clearly he had discussions 5 with counsel, he had discussions in the 6 mediation. They're confidential that all, 7 as he described part and parcel, into what 8 the thought processes were. 9 BY MR. SHORE: 10 Q. Okay. 11 So what of the things you relied upon 12 in making your determination with respect to 13 the advisability of entering into the FGIC 14 Settlement Agreement do you feel can be 15 appropriately disclosed without waiving an 16 attorney-client privilege or waiving a 17 mediation privilege? 18 MR. KERR: Objection. Asked and 19 answered. 20 A. I don't think there's anything. 21 MR. KERR: Other than what he has 22 already testified to. 23 MR. SHORE: You're not testifying. 24 MR. KERR: Okay. But you -- 25 MR. SHORE: No. Make an appropriate</p>
<p style="text-align: center;">Page 128</p> <p>1 L. Kruger 2 objection to the form. You can't do that 3 and you know you can't do that. And if I 4 show Judge Glenn that little statement you 5 made at the end of the witness's testimony 6 when he was completed, there was a period 7 at the end of that, he wouldn't be pleased. 8 MR. KERR: Okay. And I would ask, 9 Mr. Shore, that you ask clear questions so 10 the witness can answer them clearly and 11 make sure that he understands what you're 12 asking him so he can answer it. Okay. 13 MR. SHORE: Well, I would have 14 expected that if you thought my question 15 was unclear, you would have interposed a 16 form objection, not made a speaking 17 statement on the record which attempted to 18 modify your witness's statement. 19 So please feel free, it doesn't hurt 20 my feelings, you can object to any question 21 you think is unclear by saying "Objection 22 to form." Okay. 23 BY MR. SHORE: 24 Q. So what role do you believe the 25 ResCap, LLC board had in approving the FGIC</p>	<p style="text-align: center;">Page 129</p> <p>1 L. Kruger 2 Settlement Agreement? 3 A. I think, as I've said before, they 4 were aware of its terms and they authorized me 5 to proceed. 6 Q. Okay. 7 But you believe you already had the 8 authorization to do so? 9 A. I believe so. 10 Q. And did the board express to you any 11 views on their part with respect to the merits 12 or propriety of entering into the FGIC 13 Settlement Agreement? Yes or no, let's start 14 there. 15 MR. KERR: Well, objection. I just 16 want to, again, to the extent you can 17 answer "yes" or "no" without disclosing 18 privileged communications, I think you can 19 answer that question "yes" or "no." 20 A. No. 21 Q. So there wasn't a single board member 22 who had a communication with you, either oral 23 or written, where they expressed any view with 24 respect to whether or not you should be 25 entering into the FGIC Settlement Agreement?</p>

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<p>1 L. Kruger 2 A. Oh, I'm sorry, I misunderstood your 3 question. Why don't you restate your question, 4 Chris. 5 Q. Sure. 6 Did you have any communications with 7 any board member of ResCap, LLC, where they 8 expressed their views as to the propriety of 9 you executing the FGIC Settlement Agreement? 10 A. I think the board -- 11 MR. KERR: Again, you can answer that 12 "yes" or "no" without revealing 13 communications, if you can. 14 A. Yes. 15 Q. And what did they say? 16 MR. KERR: Objection. To the extent 17 you had conversations with the board 18 outside the presence of counsel, you can 19 answer the question; but to the extent you 20 had conversations with the board in the 21 presence of counsel, I will object to -- 22 BY MR. SHORE: 23 Q. Well, first let's find out, outside 24 the presence of counsel. 25 A. None.</p>	<p>1 L. Kruger 2 Q. Okay. 3 Within the presence of counsel? 4 MR. KERR: Again, if your question is 5 what was communicated with the board in the 6 presence of counsel, I think that is within 7 the privilege, and I will direct the 8 witness not to answer that question. 9 MR. SHORE: Within which privilege? 10 MR. KERR: Attorney-client privilege. 11 MR. SHORE: Attorney-client 12 privilege. All right. So let's break that 13 down. 14 BY MR. SHORE: 15 Q. First of all, can you isolate how 16 many such communications there were? 17 A. Some. 18 Q. Was it at one meeting, two meetings, 19 outside meetings, what can you tell me that 20 won't evade the privilege first, to the extent 21 one exists? 22 A. I don't remember the number of 23 discussions we had with the board or I had with 24 the board. A few. 25 Q. Okay.</p>
<p>1 L. Kruger 2 Do you any recollection of what a -- 3 the substance of what the -- any particular 4 board member said? 5 MR. KERR: Again, you can answer that 6 question "yes" or "no" without revealing 7 the substance, if you recall. 8 A. No. 9 Q. And can you remember the identity of 10 any board member who expressed a view? 11 A. No. 12 Q. Okay. 13 So you think that there were some 14 communications coming from the board members to 15 you with respect to the FGIC Settlement 16 Agreement, but you can't remember who said it, 17 what they said, or when they said it? 18 A. Well, they said it during board 19 meetings. 20 Q. Okay. 21 So -- but you don't know which board 22 meeting? 23 A. Correct. 24 Q. And you don't know who said it? 25 A. Correct.</p>	<p>1 L. Kruger 2 Q. And you don't recall what they said? 3 A. Correct. 4 Q. Did you assist -- at the board 5 meetings that we're talking about now, did you 6 assist in the presentation of any materials 7 that were presented to the ResCap, LLC board? 8 MR. KERR: Objection. 9 A. About what? 10 Q. About -- sorry. About the FGIC 11 Settlement Agreement. 12 A. No. 13 Q. Did you assist in the preparation of 14 any materials that were presented to the 15 ResCap, LLC board on monoline claims? 16 A. No. 17 Q. How many ResCap, LLC board meetings 18 did you attend, either in person or on the 19 phone, with respect to the FGIC issues, which 20 would either be the negotiation of the 21 agreement with FGIC or the entry into the FGIC 22 Settlement Agreement? 23 A. As I said before, some. 24 Q. And I think you said before, but 25 there are no minutes kept of who attends what</p>

<p style="text-align: right;">Page 134</p> <p>1 L. Kruger 2 board meetings? 3 A. I don't know. 4 Q. Okay. 5 You've never been asked to review 6 board minutes of meetings you've been at? 7 A. Correct. 8 Q. What did you view your role to be at 9 the ResCap, LLC board meetings you've testified 10 to, that is, to discuss any kind of FGIC 11 related or a monoline-related issue? 12 A. That's what I thought my role was, to 13 discuss with the board the FGIC settlement. My 14 view of it. 15 Q. And did you express your views in 16 writing at those board meetings? 17 A. No. 18 Q. Was there a secretary present keeping 19 notes? 20 A. I don't know. 21 Q. Were you aware of whether there were 22 any corporate resolutions at GMACM with respect 23 to the FGIC Settlement Agreement? 24 A. I don't know. 25 Q. What about at RFC?</p>	<p style="text-align: right;">Page 135</p> <p>1 L. Kruger 2 A. I don't know. 3 Q. Do you know whether there were any 4 shareholder or member consents that were given 5 for those entities in connection with the FGIC 6 Settlement Agreement? 7 A. Not that I know of. 8 Q. So let's just focus on the proofs of 9 claim. 10 You understand that as part of the 11 FGIC Settlement Agreement, FGIC is compromising 12 the proofs of claim it filed at GMACM, RFC and 13 ResCap, LLC; right? 14 A. Yes. 15 Q. And it's also compromising the trust 16 claims filed at those three estates; right? 17 MR. KERR: Objection. 18 A. I assume the trusts are compromising 19 their claims. 20 Q. Right. 21 Well, the settlement agreement is 22 compromising those claims; right? Because the 23 trusts are providing releases. 24 A. Correct. 25 Q. And are you aware of who on the FGIC</p>
<p style="text-align: right;">Page 136</p> <p>1 L. Kruger 2 team that we defined earlier reviewed the trust 3 claims that are being comprised as part of the 4 settlement? 5 A. No. 6 Q. And are you aware of who on the FGIC 7 team reviewed the other proofs of claim that 8 had been filed by FGIC that you hadn't 9 reviewed? 10 A. I don't know. 11 Q. Is it your assumption that somebody 12 reviewed those? 13 A. I assume, but I don't know. 14 Q. And, as you sit here today, on behalf 15 of any of the three debtors you're appearing 16 for, did any of those debtors have a reason to 17 believe that those proofs of claim could be 18 amended to add additional claims at this time? 19 MR. KERR: Objection. 20 A. I don't know. 21 Q. Each of those estates has a bar date 22 in it; right? 23 A. Yes. 24 Q. Okay. 25 Let me ask you to explain, and maybe</p>	<p style="text-align: right;">Page 137</p> <p>1 L. Kruger 2 you can turn to your declaration, which is 3 marked as Kruger No. 2 -- 4 (A Discussion was Held off the 5 Record.) 6 MR. SHORE: Kruger No. 2, which is 7 the declaration. 8 MR. KERR: You want the PSA 9 declaration or the FGIC declaration? 10 MR. SHORE: The FGIC declaration. 11 Sorry. It's right here. 12 BY MR. SHORE: 13 Q. Can you turn to page 10, Footnote 7. 14 I ask you to review that. 15 A. (Document Review.) 16 Okay. 17 Q. All right. 18 Who wrote that footnote? 19 A. My counsel. 20 Q. And you believe everything in there 21 to be true? 22 A. I believe so. 23 Q. All right. 24 Can you explain how the FGIC trustees 25 proofs of claim and the FGIC proofs of claim</p>

<p>1 L. Kruger 2 overlap, if they do? 3 MR. KERR: Objection. 4 A. Explain how they overlap? 5 Q. Yes. 6 MR. KERR: Objection, to the extent 7 you're asking for a legal conclusion. Two, 8 I object to the extent you are -- you would 9 be revealing privileged communications with 10 respect to answering that question. 11 So if you can answer that question 12 without revealing privileged 13 communications, you can do so. 14 A. Do you want to repeat the question. 15 Q. Sure. 16 How, in your view, nonlegal view, if 17 you have one, do the FGIC proofs of claim and 18 the FGIC trust proofs of claim overlap? Let me 19 ask it more colloquially for you. 20 Do you believe that those proofs of 21 claim set forth claims for separate debts or 22 obligations, or that in some respects they 23 assert claims for the same debts and 24 obligations? 25 A. I don't know.</p>	<p>1 L. Kruger 2 MR. KERR: Again, and I -- I just 3 counsel the witness -- I'm going to state 4 my objection. 5 Counsel the witness that in answering 6 that question you don't reveal any 7 privileged communications. 8 A. I don't know. 9 Q. Okay. 10 So I take it that any understanding 11 of how those claims might overlap or not 12 overlap didn't form a basis for you to 13 determine to execute the FGIC settlement 14 agreement? 15 A. Is your question who owns those 16 claims? 17 Q. My question -- well, first of all, 18 can you answer the question I just gave you, 19 which is, in your execution of the FGIC 20 Settlement Agreement, did you have any view in 21 your mind as to whether or not FGIC and the 22 trustees were separate -- were asserting the 23 same claims or different claims? 24 MR. KERR: Again, I'm going to 25 object. You can answer that question to</p>
<p>Page 140</p> <p>1 L. Kruger 2 the extent you don't reveal any 3 communications with counsel, but you can 4 answer the question. 5 A. I believe they had separate claims. 6 Q. Okay. 7 And what's the basis for your belief? 8 MR. KERR: Same objection. 9 A. FGIC had its claims and the trustees 10 had their claims. 11 Q. Okay. 12 Did you understand that those claims 13 were for separate obligations? 14 A. I believe so. 15 Q. And what is the basis of that belief? 16 MR. KERR: Same objection. 17 A. Conversation with my counsel and my 18 own business decision. 19 Q. Okay. 20 But your own business decision wasn't 21 based upon any review of the RMBS trusts proofs 22 of claim; right, because you didn't do that? 23 MR. KERR: Objection. 24 A. I had not reviewed those. 25 Q. Okay.</p>	<p>Page 141</p> <p>1 L. Kruger 2 So let me ask you a question now, and 3 you may want to pull out No. 1, which is the 4 settlement agreement. 5 A. Okay. 6 Q. All right. 7 I'm going to ask you to turn to 8 page 4, Section 2.01, the releases. 9 A. Uh-huh. 10 Q. Now, you don't need to review that. 11 Let me give you a lead-in question on this. 12 Am I right that the FGIC settlement 13 agreement contemplates two scenarios, one in 14 which the plan is confirmed and one in which 15 the plan is not confirmed; right? 16 A. Correct. 17 Q. I want to focus on the situation in 18 which the plan is not confirmed. All right. 19 And I want to focus on the trustee 20 claims. What happens to the trustee claims as 21 your business understanding in the deal you 22 reached, what happens to the trustee claims if 23 the plan is not confirmed? 24 A. I believe they are released. 25 Q. Okay.</p>

<p style="text-align: center;">Page 142</p> <p>1 L. Kruger 2 So notwithstanding their assertion of 3 a five -- or I think you said in here more than 4 five billion dollars of claims, they give up 5 those claims in the debtor's view if the plan 6 is not confirmed? 7 MR. KERR: Objection. 8 A. And the settlement agreement is 9 confirmed by the court. 10 Q. Right. 11 A. Yes. 12 Q. Okay. 13 And then, I take it that the -- that 14 if this settlement agreement is approved, 15 you're right to put that qualification in, but 16 the plan does not close, the trustees are free 17 to go -- to pursue their claims against Ally, 18 whatever claims they might have; right? 19 A. I assume so. I assume the global 20 settlement goes away. 21 Q. And in the same scenario, FGIC is 22 permitted to pursue its claims against Ally? 23 MR. KERR: Objection. 24 A. Yes. 25 Q. What analysis, if any, have you seen</p>	<p style="text-align: center;">Page 143</p> <p>1 L. Kruger 2 as to whether or not Ally has a right of 3 indemnity or contribution if it is liable to 4 any RMBS trust or FGIC with respect to its 5 claims? 6 Have you seen one? Let's start yes 7 or no. 8 A. Yes. 9 Q. And in forming -- in forming your 10 determination to execute the FGIC Settlement 11 Agreement, did you consider the possibility 12 that if this settlement agreement is approved 13 and the plan is not confirmed, that FGIC can 14 sue Ally, and if it recovers, Ally might be 15 able to make a claim back against any debtor 16 estate? 17 MR. KERR: Objection. 18 A. I discussed that with my counsel. 19 Q. Okay. 20 And did you reach a conclusion, yes 21 or no? 22 MR. KERR: Objection. 23 BY MR. SHORE: 24 Q. And to whether there was any risk of 25 that?</p>
<p style="text-align: center;">Page 144</p> <p>1 L. Kruger 2 A. No. 3 MR. KERR: Again, you can answer that 4 "yes" or "no." 5 BY MR. SHORE: 6 Q. And did you perform a business view 7 as to the level of the risk of that happening? 8 A. No. 9 Q. But you agree with me that 10 technically the way the settlement agreement 11 works, FGIC would be able to assert claims 12 against Ally and Ally might be able to assert 13 claims back against the debtors? 14 MR. KERR: Objection. Objection. 15 A. I have to stop and read the agreement 16 to be sure. You are correct. 17 Q. In reviewing -- do you understand 18 that one of the theories that FGIC had asserted 19 in its proofs of claim was that RFC was 20 derivatively liable for the debts of GMACM and 21 GMACM was derivatively liable for the debts of 22 RFC? 23 A. I don't know if I saw that. I saw 24 that in the alter ego argument. 25 Q. Okay.</p>	<p style="text-align: center;">Page 145</p> <p>1 L. Kruger 2 Well, so, let me talk about 3 derivative liability and I'll give you a 4 definition of derivative liability. 5 Where a particular debtor entity 6 would be held responsible for the debts of 7 another legal entity without ever having 8 transacted with the third party. 9 Okay? 10 A. Uh-huh. 11 Q. All right. 12 (A Discussion was Held off the 13 Record.) 14 (Kruger's Exhibit 12, Proof of 15 Claim by FGIC, was marked for 16 identification.) 17 BY MR. SHORE: 18 Q. All right. 19 Kruger No. 12, for the record, is a 20 proof of claim filed by FGIC against 21 Residential Funding Company, LLC. I know that 22 people out here might be holding ones with 23 different names on them. 24 A. Okay. 25 Q. But I will represent that is the same</p>

<p style="text-align: center;">Page 146</p> <p>1 L. Kruger 2 substance that was attached to each of them. 3 I'm just doing it for convenience of counsel so 4 that more people can have a copy of it. 5 And if you look at the attachment on 6 the third page of Kruger No. 12, is this the 7 attachment you reviewed before when you said 8 you reviewed a FGIC proof of claim? 9 MR. KERR: Objection. 10 A. As I said, I reviewed one FGIC proof 11 of claim, but I assume -- you said that they're 12 the same. I take your word for it. 13 Q. Okay. 14 Well, as I said, do you recall 15 reviewing this document entitled "Attachment to 16 Proofs of Claim of FGIC against" -- you see 17 it's ResCap, LLC, GMAC Mortgage and RFC? 18 A. Yes. 19 Q. Okay. 20 If you turn to -- turn to 21 paragraph 39. So, actually, let me focus you 22 on 38. All right. 23 You see in 38, FGIC claims it's 24 entitled to receive damages from each of the 25 debtors in an amount not less than 1.85</p>	<p style="text-align: center;">Page 147</p> <p>1 L. Kruger 2 billion? 3 A. Uh-huh. 4 Q. Okay. 5 And in little 3 there, "Expectation 6 damages from -- for any losses on the trusts." 7 A. Yes. 8 Q. Do you understand that the RMBS 9 trusts also asserted claims against these three 10 debtors at issue for expectation damages for 11 losses on the trust? 12 MR. KERR: Objection. 13 A. I don't know. 14 Q. Then if you look on paragraph 39, I'm 15 going to come back that the first sentence that 16 says that ResCap is liable, but it says, 17 "Additionally, as described previously, GMACM 18 and RFC are likewise jointly and severally 19 liable for FGIC's damages." 20 Do you see that? 21 A. Yes. 22 Q. Okay. 23 What role, if any, did -- well, first 24 of all, did you consider the possibility that 25 GMACM and RFC might be jointly and severally</p>
<p style="text-align: center;">Page 148</p> <p>1 L. Kruger 2 liable in making your determination as to 3 whether or not to settle in the FGIC Settlement 4 Agreement? 5 A. Yes. 6 Q. Okay. 7 And what role did that have? 8 A. I discussed it with my counsel. 9 Q. And did you form a business view as 10 to the level of risk that that would happen? 11 A. No. 12 Q. But I take it as part of the 13 settlement agreement, there is no -- that there 14 is no joint and several liability, there are 15 fixed amounts set at each estate? 16 MR. KERR: Objection. 17 A. Under which scenario, plan, no plan? 18 Q. Well, okay. 19 The -- only one claim can be asserted 20 against GMACM by FGIC; right? 21 MR. KERR: Objection. 22 A. Under -- 23 Q. Under the settlement agreement. 24 A. Right. 25 Q. Even if the plan isn't consummated,</p>	<p style="text-align: center;">Page 149</p> <p>1 L. Kruger 2 there is only ever going to be one claim 3 against GMACM? 4 A. Correct. 5 Q. And whether or not the plan is ever 6 consummated, there's only going to be one FGIC 7 claim against RFC? 8 A. Correct. 9 Q. Now, with respect to the claims that 10 are listed in paragraph 38, did you understand 11 that there was a possibility that if litigated 12 to conclusion, those claims could result in a 13 zero recovery by FGIC? 14 A. I discussed the status -- 15 MR. KERR: Wait. Again, you can 16 answer that question without revealing 17 communications with clients, with your 18 attorneys, but why don't you listen to the 19 question again. 20 A. Give it again. 21 Q. Sure. 22 With respect to the claims that are 23 outlined in paragraph 38 of Kruger No. 12, did 24 you reach an understanding that there was a 25 possibility that, if litigated to conclusion,</p>

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<p>1 L. Kruger 2 FGIC would be -- would have no claims at any of 3 the three debtors? 4 A. No. 5 Q. You had always believed that, if 6 litigated, FGIC would be entitled to some 7 claim? 8 A. I've had all these discussions with 9 counsel. I'm uncomfortable describing those 10 conversations or the conclusions of them. 11 Q. When you say you're uncomfortable, 12 are you going to get an instruction from 13 counsel? Are you going to follow counsel's 14 instructions? 15 MR. KERR: Let me help the witness 16 out. 17 Mr. Kruger, you -- I think the 18 question is did you reach an understanding. 19 And if you can testify to any understanding 20 you reached as a business person, that's 21 fine. I just don't want you to reveal any 22 communications that you had with counsel in 23 connection with responding to that 24 question. 25 And if you don't know, you don't</p>	<p>1 L. Kruger 2 know, but -- 3 A. I don't know. 4 Q. And did you understand that there was 5 a possibility that even if the FGIC claims were 6 litigated to conclusion and resulted in a 7 recovery or a claim amount awarded to FGIC, 8 that, nonetheless, it might not be able to 9 receive any distribution if its claim was 10 subordinated? 11 A. Yes. 12 Q. Okay. 13 And while you were negotiating the 14 FGIC Settlement Agreement, did you have an 15 understanding as to what the likelihood of 16 distribution was at GMACM on account of a 17 subordinated unsecured claim? 18 MR. KERR: Again, you can answer that 19 question to the extent you don't reveal any 20 privileged communications. 21 BY MR. SHORE: 22 Q. I'm just talking about the math here. 23 A. Repeat that question. 24 Q. Sure. 25 Let me ask it in a different way.</p>
<p style="text-align: center;">Page 152</p> <p>1 L. Kruger 2 Have you seen any financial analysis 3 since you have been CRO of these three 4 particular debtors in which GMACM has 5 distributable value available for a class of 6 claims that are subordinate to general 7 unsecured claims? 8 A. No. 9 Q. And what about with respect to RFC? 10 A. No. 11 Q. So was it your working assumption 12 when negotiating the FGIC settlement agreement 13 that if FGIC's claims were subordinated, that 14 they would not receive any recovery at 15 either -- at any of the three estates? 16 MR. KERR: Objection. Assumes facts 17 not in evidence. 18 A. I did not consider that. 19 Q. Well, did you consider at any time 20 during the negotiation of the FGIC Settlement 21 Agreement that whether, by way of litigation or 22 by subordination, that FGIC would get a zero 23 recovery in the GMACM estate? 24 A. I did consider whether or not their 25 claims could be subordinated, and I discussed</p>	<p style="text-align: center;">Page 153</p> <p>1 L. Kruger 2 that with my counsel. 3 Q. Uh-huh. 4 But you didn't consider the effect of 5 what subordination would mean? 6 MR. KERR: Objection. 7 A. I did consider the effect of what 8 subordination would mean. 9 Q. And what was your conclusion? 10 A. That the risk of -- that the 11 alternative of the settlement agreement was far 12 superior to them engaging in litigation. 13 Q. Now, I'm just trying to focus on the 14 consequence of what subordination meant and I'm 15 just trying to harmonize the answers you gave. 16 You haven't seen anything that shows 17 that a subordinated claim would get a 18 distribution. Did you understand that in the 19 context of the allowance of the FGIC claims or 20 the litigation of the FGIC claims, that FGIC 21 might, in fact, get zero? 22 A. Yes. 23 Q. Okay. 24 Have you seen any -- well, let me ask 25 it this way. What was the working, your</p>

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<p>1 L. Kruger 2 working assumption in negotiating the FGIC 3 Settlement Agreement as to the possibility 4 that -- I'm going to deal with a different 5 theory of derivative liability -- that at any 6 creditor would pierce the corporate veil 7 between GMACM and ResCap, LLC? 8 A. It's another subject that I discussed 9 with my counsel. 10 Q. But you formed no view as to the risk 11 that would happen? 12 A. I understood the risk and I thought 13 that the litigation to get to the conclusion 14 was not worth the risk. 15 Q. Okay. 16 And what about with respect to 17 piercing the corporate veil between RFC and 18 ResCap, LLC? 19 A. Same answer. 20 Q. And did you, in analyzing the -- 21 whether or not to enter into the FGIC 22 Settlement Agreement, the possibility that 23 GMACM and ResCap, LLC, could be substantively 24 consolidated in the bankruptcy cases? 25 A. If there was no settlement agreement.</p>	<p>1 L. Kruger 2 Q. Yes. 3 A. Sure. 4 Q. Okay. 5 And did you form a view as to the 6 risk of that? 7 A. Yes. 8 Q. And did that inform your decision to 9 enter into the FGIC Settlement Agreement? 10 A. Yes. 11 Q. Okay. 12 And what about with respect to the 13 RFC side? 14 A. Yes. 15 Q. Same answers? 16 A. Same answer. 17 MR. KERR: Chris, at some point, I 18 don't know whether you're going to take a 19 break for lunch or -- 20 MR. SHORE: Sure. I'm happy to take 21 a break. Let's take a break. 22 (Recess taken from 12:59 p.m. to 23 1:30 p.m.) 24 25</p>
<p>1 L. Kruger 2 AFTERNOON SESSION 3 (Time noted: 1:30 p.m.) 4 5 L E W I S K R U G E R, 6 resumed and testified as follows: 7 CONTINUED EXAMINATION 8 BY MR. SHORE: 9 Q. Let's focus on the claims that are 10 being allowed at RFC -- sorry, ResCap, LLC. 11 What's the reason why the claim is 12 fixed if the plan is confirmed but left 13 unliquidated if the plan is not confirmed? 14 MR. KERR: Again, Chris, as you know, 15 there's a question about whether or not 16 plan confirmation issues need to be 17 addressed as part of the plan confirmation 18 process. 19 I recognize that there's stuff in the 20 FGIC Settlement Agreement, so -- and I -- 21 this is not a place to be talking about 22 broader plan confirmation issues. So I 23 will object if I think we're getting there. 24 A. Want to start the question again. 25 Q. Sure.</p>	<p>1 L. Kruger 2 What's the reason why the FGIC claim 3 at ResCap, LLC is fixed if the plan is 4 confirmed but left unliquidated if the plan is 5 not? 6 MR. KERR: And, again, are you 7 talking -- you're referring to the FGIC 8 Settlement Agreement, because if you're 9 talking more than that, then I don't think 10 it's appropriate. 11 BY MR. SHORE: 12 Q. Can you answer the question? 13 A. Are you asking -- if I can respond by 14 this way. Are you talking about the 15 \$337 billion allocation? 16 Q. Yes. 17 A. I think it is in the context of the 18 plan. But having said that, I think the reason 19 that there is a claim there is that FGIC did 20 have, indeed, claims against ResCap, as well as 21 against Ally, and it seemed to be appropriate 22 that it should be there and it's part of the 23 global summary and part of the allocation 24 process that we went through as part of the 25 mediation.</p>

<p style="text-align: center;">Page 158</p> <p>1 L. Kruger 2 Q. All right. So let me break that into 3 two pieces. 4 First of all, why was it left 5 unliquidated in the event that the plan was not 6 confirmed? 7 MR. WYNNE: I'm going to object to 8 the extent that that would require him to 9 disclose what was discussed in the 10 mediation. 11 MR. KERR: Let me state it this way. 12 All right. 13 MR. SHORE: Please. 14 MR. KERR: To the extent you can 15 answer the question without revealing 16 discussions that happened in mediation -- 17 let me read the question again. 18 To the extent you can answer the 19 question without disclosing anything that 20 occurred in the mediation, that's fine. 21 Again, Chris -- 22 A. It was part of the -- 23 MR. KERR: Chris, if you're asking 24 about the FGIC Settlement Agreement and 25 you're referring us to why is it this way</p>	<p style="text-align: center;">Page 159</p> <p>1 L. Kruger 2 in the FGIC Settlement Agreement, I think 3 that's a fair question. 4 So -- but if you're going to be 5 talking more broadly about what was the 6 discussion at the mediation, I'm going to 7 direct him not to answer. If you're going 8 to be talking about what is in the plan 9 confirmation, that is not what we're here 10 for, as well. 11 A. It was part of the negotiation of the 12 settlement agreement in the mediation. 13 Q. And what were the reasons that the 14 debtors were willing to proceed or ResCap, LLC 15 was willing to proceed with the settlement 16 agreement in which it didn't fix its claim, the 17 claim asserted by FGIC against it? 18 MR. KERR: Again, on that question, 19 I'm going to direct him not to answer due 20 to the confidentiality provision. 21 BY MR. SHORE: 22 Q. So you're not going to testify at all 23 as to why the claim is left unliquidated at 24 ResCap, LLC in the event that the plan doesn't 25 close?</p>
<p style="text-align: center;">Page 160</p> <p>1 L. Kruger 2 MR. KERR: Chris, you can ask him -- 3 you can show him the settlement agreement, 4 ask him what's your understanding of why 5 this is. And if you can answer that 6 question without revealing discussions in 7 the mediation, you can answer that. 8 MR. SHORE: Well, look, I've been 9 avoiding making speeches, unlike some 10 others at the table. I don't agree that 11 you can come in and take the position that 12 the agreement was negotiated at arm's 13 length, but then say you're not entitled to 14 ask any questions with respect to what I 15 meant by arm's lengths, and we'll get to 16 those questions. 17 You guys can take whatever positions 18 you want, but you can't take a sword and a 19 shield. I'm here on the FGIC Settlement 20 Agreement. 21 BY MR. SHORE: 22 Q. If you turn to Article III, am I 23 correct that Article or Section 3.01 describes 24 the two scenarios in which -- in which the 25 claims that FGIC has asserted at ResCap, LLC</p>	<p style="text-align: center;">Page 161</p> <p>1 L. Kruger 2 will be treated? 3 A. Yes. 4 Q. And in one scenario they get an 5 allowed general unsecured claim of 331 million; 6 right? 7 MR. KERR: Objection. 8 A. I don't see that in 3.01. 9 Q. They get -- it gets broken up into 10 the allocation between ResCap, LLC, GMACM and 11 RFC. 12 A. Uh-huh. 13 Q. All right. 14 So there's also the scenario in which 15 the plan is not co-effective. Okay. 16 And then it says down at the -- it's 17 five lines up from the bottom. "FGIC reserves 18 all rights to assert general unsecured claims 19 against each of ResCap, LLC, GMACM and RFC, as 20 reflected in the proofs of claim, with all 21 claims by FGIC including any FGIC allowed 22 claims, or otherwise against each such entity 23 capped each case in the amount of 596 million." 24 Do you see that? 25 A. Yes.</p>

<p style="text-align: center;">Page 162</p> <p>1 L. Kruger 2 Q. Okay. 3 First of all, in the event that the 4 plan doesn't go effective -- I think we've gone 5 through this -- the total amount of claims 6 asserted at RFC and GMACM totals 596 million; 7 right? 8 A. Yes. 9 MR. KERR: Objection. 10 BY MR. SHORE: 11 Q. And there are no RMBS trust claims at 12 that point. They've been released; right? 13 A. Yes. 14 Q. So the maximum amount that -- okay. 15 Let's break this even further. 16 What do you understand to be the 17 theory by which FGIC has asserted in either its 18 complaint or the proof of claim with respect to 19 why it has a claim at ResCap, LLC? 20 MR. KERR: Again, you can answer that 21 question again without revealing 22 communications with counsel. 23 A. They argue alter ego may be aiding 24 and abetting. 25 Q. And you say "may be aiding and</p>	<p style="text-align: center;">Page 163</p> <p>1 L. Kruger 2 abetting," what are you referring to? 3 A. I mean that would be part of their 4 claim. 5 Q. When you say you think that would be 6 "part of their claim," would that be something 7 you read in the complaint? 8 A. I think I read that in the complaint. 9 Q. Okay. 10 And what about the proof of claim? 11 Are you aware of whether there's any statement, 12 any assertion of an aiding and abetting theory 13 against Res -- 14 A. I have to go back and read the proof 15 of claim. 16 Q. Let me just finish my question. 17 A. Sorry. 18 Q. Are you aware of any assertion of an 19 aiding and abetting claim in the FGIC proof of 20 claim, at least as it pertains to ResCap, LLC? 21 A. I don't see those words in the actual 22 proof of claim that you submitted earlier, I 23 guess, as No. 12. 24 Q. So what do you understand to be the 25 maximum liability in the event that ResCap --</p>
<p style="text-align: center;">Page 164</p> <p>1 L. Kruger 2 sorry -- in the event that the plan does not 3 close? And when I say maximum liability, at 4 ResCap, LLC. 5 A. 596. 6 Q. All right. 7 And under the Settlement Agreement, 8 ResCap, LLC has reserved all its rights to 9 argue that it doesn't owe anything? 10 A. Owe that money. 11 Q. Right. 12 You said before, though, that the 13 claim in the plan setting is getting allowed at 14 331? 15 MR. KERR: Objection. 16 BY MR. SHORE: 17 Q. Why do I have the wrong number? Do I 18 have the wrong number? 19 A. I think it's 337. 20 Q. 337. Yes. Sorry. My eyes are gone. 21 Okay. 22 But it gets allowed at 337 in the 23 context of the plan being confirmed? 24 A. Correct. 25 Q. Okay.</p>	<p style="text-align: center;">Page 165</p> <p>1 L. Kruger 2 Does that 337 reflect just a view of 3 management, you -- as advised by the lawyers 4 that that's the liability for a alter ego 5 theory; in other words, one way to look at this 6 is that if you looked at the allowance of 337 7 versus a total maximum liability of 596, that 8 represents more than a 50 percent likelihood 9 that if you litigated it to conclusion, that 10 ResCap, LLC would be held liable for the debts 11 of GMACM and RFC? 12 MR. KERR: Objection. 13 A. Is there a question in there? 14 Q. Yes. 15 First of all, is that the proper way 16 of looking at it? 17 A. I think the way I looked at the, if 18 that's the question that you're asking, with 19 respect to the plan being confirmed, then it 20 seems to be that the way to think about it is 21 in the context of the global settlement and the 22 mediation process. 23 And we came to a conclusion and I 24 came to a conclusion myself that it was not an 25 appropriate for there to be a FGIC claim at</p>

<p style="text-align: center;">Page 166</p> <p>1 L. Kruger 2 ResCap, because they had alleged theories why 3 they should have claims at the ResCap level and 4 theories why they should have claims against 5 Ally. 6 So it seemed to be not inappropriate 7 for them to have a claim against ResCap in the 8 context of a confirmed plan, although I really 9 think in part it's a planned confirmation 10 issue; but, nonetheless, that's why it came 11 out. 12 Q. But what do you mean by it would be 13 not -- was it not inappropriate to give them a 14 claim on account of they had claims against 15 Ally. 16 I don't understand what that means. 17 A. Well, there is an Ally settlement as 18 part of the global claim settlement, global 19 claim agreement. And I think my thought 20 was that in light of that and in view of the 21 fact that, in my mind, the prospect of 22 litigating with FGIC over the proof of claims 23 on alter ego theories would be an unfortunate 24 outcome because we would spend years in 25 litigation with uncertain results, and that the</p>	<p style="text-align: center;">Page 167</p> <p>1 L. Kruger 2 global plan agreement was a far better outcome. 3 And part of that global plan 4 agreement was an acknowledgment that they're 5 entitled to a claim against ResCap. 6 Q. So let me ask it this way. 7 Do you believe that \$337 million 8 claim at ResCap outside the context of the 9 global settlement would be an appropriate claim 10 amount? 11 MR. KERR: Objection. 12 A. I haven't considered that, no. 13 Q. Okay. 14 What was the reason you didn't just 15 agree to fix the liability at 337 under all 16 circumstances? 17 MR. KERR: Objection. Again, if you 18 can -- again, I don't want you to disclose 19 anything that was discussed in the 20 mediation, you can answer that question 21 without disclosing what was discussed in 22 the mediation. 23 A. It was part of the mediation in the 24 global settlement agreement. It's hard for me 25 to separate out.</p>
<p style="text-align: center;">Page 168</p> <p>1 L. Kruger 2 Q. You said before that it was 3 compensating for their claims against Ally. 4 What did you mean about that? 5 A. Well, they alleged that they had 6 claims against Ally. 7 Q. So? 8 A. Domination control of ResCap, Ally is 9 paying \$2.1 billion to settle these claims. 10 They are looking for releases from FGIC, as 11 well. It's not inappropriate for part of the 12 proceeds of their contribution to be used to 13 satisfy the FGIC claims. 14 Q. Okay. 15 Well, did GMACM contribute more 16 claims or give more claims to FGIC in the event 17 of the settlement? 18 Its claim is fixed; right? 19 A. When you say it's fixed, I'm not sure 20 I'm following that. 21 Q. Okay. 22 The claim against GMACM that you're 23 allowing FGIC is the same claim whether the 24 plan is confirmed or not; right? 25 A. It's 596.</p>	<p style="text-align: center;">Page 169</p> <p>1 L. Kruger 2 Q. Right. 3 Well, 596 is combined for both GMACM 4 and RFC; right? 5 A. Correct. 6 Q. Okay. 7 Well, let's just ask it that way. 8 And it's 596, whether or not the plan is 9 confirmed; right? 10 MR. KERR: Objection. 11 MR. WYNNE: Objection. 12 A. I don't think I can answer that 13 outside of the context of the mediation. 14 Q. So what is it? You're here as the 15 business person. What is the claim that FGIC 16 has against GMACM in the event that the plan is 17 confirmed or is not confirmed? 18 A. That was just set forth in the 19 settlement agreement. 20 Q. Okay. 21 What is it? What is your business 22 understanding? 23 A. My business understanding is that 24 those claims, if the plan is not confirmed, 25 right, is that those allocations are, in part,</p>

<p style="text-align: center;">Page 170</p> <p>1 L. Kruger 2 based upon the governing agreements under the 3 trusts and FGIC and the debt. 4 Q. Okay. 5 And if it isn't confirmed -- or, 6 sorry, if it is confirmed? 7 A. Then if it is confirmed, then FGIC 8 does get a claim against ResCap. 9 Q. Okay. 10 But why -- when you say "ResCap," you 11 mean ResCap, LLC? 12 A. LLC. 13 Q. Okay. 14 But why would ResCap, LLC be the one 15 giving the claim in the event that there is a 16 confirmation? 17 MR. KERR: Objection. 18 A. Again, Chris, that's part of the 19 global settlement that was agreed to during the 20 course of the mediation. 21 Q. Okay. 22 Let me just ask it this way. Is what 23 you're saying is that this is the way in which 24 FGIC gets a direct or gets a piece of the Ally 25 settlement by resolving the claim -- resolving</p>	<p style="text-align: center;">Page 171</p> <p>1 L. Kruger 2 its claims and signing a plan support 3 agreement? 4 MR. KERR: Again, you can answer that 5 question without revealing anything that 6 was discussed in the mediation, you can do 7 so. 8 A. Well, it comes out of the mediation. 9 It's in the context of the global settlement 10 where the parties agreed to an allocation among 11 themselves as to what would they hope 12 their outcomes would be as set forth in the 13 appendix to the PSA and term sheet. 14 And this was a portion of the way to 15 achieve the result and a way that we thought 16 was fair and reasonable to all the parties. 17 Q. So I take it that the allowance -- so 18 if there's not an Ally settlement, there would 19 be no plan confirmed; right? 20 A. Correct. 21 Q. And in that case, nobody would need 22 to be dividing up the Ally contribution; right? 23 Because there wouldn't be one? 24 A. There wouldn't be one. 25 Q. Right.</p>
<p style="text-align: center;">Page 172</p> <p>1 L. Kruger 2 So I just need to know, is your view 3 that the 337 would stay the same, go up, go 4 down, in the event that the debtors were 5 negotiating with FGIC for an allowance of the 6 claim at ResCap, LLC? 7 MR. KERR: Objection. 8 A. I have no idea. 9 Q. Are you aware that from time to time 10 the debtors, their counsel, even the 11 prepetition debtors expressed views as to the 12 likelihood that any of the RMBS trust claimants 13 or monoline claimants could pierce the 14 corporate veil? 15 A. I've had discussions with my counsel 16 about piercing the corporate veil, alter ego 17 theories and the like. I've taken those into 18 consideration. It's part of my judgment as to 19 why I think this settlement agreement is an 20 appropriate one. 21 Q. Are you aware from time to time the 22 debtors have published waterfall analyses that 23 have shown that there would be no RMBS or 24 monoline claims allowed at the ResCap, LLC 25 level?</p>	<p style="text-align: center;">Page 173</p> <p>1 L. Kruger 2 MR. KERR: Objection. 3 A. I have no idea. 4 Q. Were you involved in any discussions 5 with the financial advisors or the financial 6 teams at ResCap, LLC, to discuss the -- the 7 ability of any RMBS trust or monoline to assert 8 claims at ResCap, LLC? 9 MR. KERR: And, again, I don't want 10 you to reveal any communications, either 11 privileged communications or communications 12 in the context of the confidentiality. You 13 can answer that question "yes" or "no," if 14 you can. 15 A. Yes. 16 Q. And what was your involvement? 17 A. I participated in presentations by my 18 counsel, financial advisors, and the like 19 discussing alter ego theories, piercing 20 corporate veil theories. I took that into 21 consideration in the process of litigating with 22 respect to those and the absence of the global 23 settlement and what that would mean to 24 everybody. 25 And it's part of what informed my</p>

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1 L. Kruger
2 decision that this was a good idea.
3 Q. And were you aware -- were you
4 involved in the determination to reflect in
5 those waterfall analyses a zero recovery for
6 RMBS and monolines at ResCap, LLC?
7 MR. KERR: Objection. Assumes facts
8 not in evidence.
9 A. No.
10 Q. All right.
11 You want the facts in evidence?
12 (Kruger's Exhibit 13, Documents,
13 was marked for identification.)
14 MR. KERR: Chris, can I just ask you,
15 were these -- what were these documents?
16 MR. SHORE: These were from a prior
17 production. This was in connection with
18 the RMBS settlement. It's marked
19 professional eyes only, so let's keep that
20 in mind when you guys are looking at it.
21 MR. KERR: Chris, I was not involved
22 with the RMBS proceeding. I don't know
23 under what kind of confidentiality
24 restrictions these were produced.
25 MR. SHORE: I'm saying, just make

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1 L. Kruger
2 sure they stay with outside professional
3 eyes only.
4 MR. KERR: Do you know whether they
5 can be used outside the context of the
6 RMBS?
7 MR. SHORE: I don't know. I don't
8 need to be able to use them to ask the
9 witness questions.
10 MR. KERR: Okay. I just want to make
11 sure, Chris. Again, I have not seen this
12 document before. I don't know in what kind
13 of confidentiality it was produced under.
14 If you want go ahead and do that,
15 that's your call. I'll just tell you I
16 just don't know and that's why I was
17 asking.
18 MR. SHORE: Okay. Well, you had made
19 a foundation question about assuming facts
20 not in evidence. I assumed you had an
21 understanding as to what the record was
22 with respect to the waterfalls that have
23 been presented starting with the board
24 meeting and working over the last year.
25 What you're telling me is you didn't

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1 L. Kruger
2 really have a basis to assert that such
3 that I don't need to go through the
4 waterfall analyses to show that
5 consistently over time the debtors have
6 always reflected that there would not be a
7 recovery at ResCap, LLC by any monoline or
8 RMBS trust claimant. I don't have to go
9 through it.
10 We're on a time limit with the
11 witness. I won't do that. But I'm going
12 to ask you when we get to a hearing on this
13 and I ask that question, please inform
14 yourself as to what the facts are before
15 you make that objection. Okay?
16 MR. KERR: Okay. And I'm going to
17 say this, Chris. The document you just
18 gave me is from May 9, 2012, which predated
19 the bankruptcy hearing.
20 MR. SHORE: No question. What I'm
21 saying is, we can start there and we can
22 work through all the waterfall analyses
23 both coming into bankruptcy and through and
24 all the way until the present discussions.
25 Okay. So that's all I'm saying. That's

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1 L. Kruger
2 the earliest one I found.
3 Okay. And then we can go through the
4 pleadings in which the debtors have
5 represented that they don't believe that
6 there's any liability at ResCap, LLC.
7 BY MR. SHORE:
8 Q. Let me ask you this question.
9 Have you ever seen a waterfall
10 analysis leading up to the mediation in which
11 ResCap or any of its -- ResCap, LLC or any of
12 its subsidiaries was reflecting that the RMBS
13 claimants or any monoline would be getting an
14 allowed claim at ResCap, LLC?
15 MR. KERR: Are you talking prior to
16 the mediation?
17 BY MR. SHORE:
18 Q. Prior to the mediation. That's what
19 I said.
20 A. They didn't exist. I haven't seen
21 those.
22 Q. Okay.
23 But you haven't come across any of
24 those in connection with your --
25 A. No.

<p style="text-align: right;">Page 178</p> <p>1 L. Kruger 2 Q. Okay. 3 And what role, if any, have you 4 played in the filing of any pleadings in which 5 ResCap, LLC's liability on either an alter ego 6 or veil piercing or subsequent consolidation 7 basis has been discussed by the debtors? 8 MR. KERR: Objection. 9 A. I think I've said before, all I think 10 I can say about that is I had conversations 11 with my counsel and my advisors as to the veil 12 piercing arguments and the alter-ego 13 arrangements, and I've come to my own 14 conclusion with respect to them. 15 Q. Are you aware that -- the counsel is 16 Morrison & Foerster; right? 17 A. Yes. 18 Q. And are you aware that counsel has 19 made public statements as to their views with 20 respect to what the likelihood is that that 21 would happen? 22 A. I'm not surprised. 23 Q. Okay. 24 And do you understand what they have 25 expressed in that regard?</p>	<p style="text-align: right;">Page 179</p> <p>1 L. Kruger 2 A. No. 3 Q. Let me just read you a statement and 4 see whether it's consistent or completely at 5 odds with what you've been talking about with 6 your lawyers. 7 This is from the ResCap or the 8 debtor's reply to the objection of Junior 9 Secured Noteholders, the Motion for Approval of 10 the RMBS Settlement Agreements. Let me just 11 read it for the record. It's Docket No. 3221. 12 "ResCap, LLC, of course, has little 13 exposure to liability, only on an alter ego or 14 a corporate veil piercing theories, and also as 15 no assets and so likely will not face future 16 litigation." 17 Is that consistent with or at odds 18 with the general tenor of the discussions 19 you've been having about the likelihood that 20 ResCap, LLC might be viable on a veil piercing 21 or alter ego theory? 22 MR. KERR: I will object to that 23 question to the extent it invades a 24 privilege. You want to ask him his 25 understanding.</p>
<p style="text-align: right;">Page 180</p> <p>1 L. Kruger 2 MR. SHORE: Sure. 3 MR. KERR: If you're asking about 4 conversations with counsel, and if you ask 5 it that way, I will direct the witness not 6 to answer. 7 BY MR. SHORE: 8 Q. Is it consistent with your 9 understanding that ResCap faces little, if any, 10 liability on alter ego or veil piercing 11 theories? 12 MR. WYNNE: Objection. 13 MR. KERR: Objection. 14 A. As a business person understanding 15 the arguments for why people would say that, 16 it's still my considered opinion that a better 17 outcome is a settlement agreement -- 18 Q. And you wouldn't -- 19 MR. KERR: Let him finish his answer. 20 A. Because the alternative of trying to 21 prove and argue against a veil piercing 22 argument or an alter ego argument would be both 23 time consuming, would destroy the global 24 settlement agreement, would not, in my mind, be 25 sensible or benefit the creditors of this</p>	<p style="text-align: right;">Page 181</p> <p>1 L. Kruger 2 estate or the estates. 3 Q. Well, you wouldn't be allowing claims 4 that you thought were illegitimate claims just 5 to foster a settlement, would you? 6 MR. KERR: Objection. 7 A. What do you mean? I'm not sure what 8 you mean. 9 Q. Well you wouldn't, for example, if 10 FGIC said I'm only going to settle if you give 11 me a secured claim at ResCap, LLC, that 12 wouldn't have been something in your 13 consideration; right? 14 A. I would consider whatever a party 15 suggests was appropriate for them to be part of 16 the process of choosing a global settlement 17 agreement. 18 Q. Okay. 19 So why is the global settlement so 20 important here? 21 A. I think it's very important, because 22 it does seem to me that the alternative to 23 the global settlement is no Ally contribution 24 of \$2.1 billion, which I believe is a lot of 25 money; secondly, that the outcome of no Ally</p>

<p style="text-align: center;">Page 182</p> <p>1 L. Kruger 2 settlement and no global settlement agreement 3 would mean that the parties themselves, all the 4 inter-creditor issues would come to the forth 5 creditors would be suing each other, creditors 6 would all be suing ResCap. This case would go 7 on forever. Professional fees and the costs of 8 administering this estate are enormous. 9 And it seems to me that that will be 10 to the detriment of all competitors. And I 11 think that's not helpful. I think in my 12 business judgment this is a far better 13 alternative.</p> <p>14 Q. So in your view that you would 15 consider what anybody asked you for a claim 16 amount, if that --</p> <p>17 A. That's why I asked him whether 18 Ms. Lincoln was happy or -- I don't understand 19 that. You can't ask me that question that way.</p> <p>20 Q. Let me ask you the question. 21 Are you saying then that in order to 22 allow that global settlement with all what you 23 believed to be the important benefits of that 24 global settlement to go forward, you'd give a 25 claim to somebody if they wanted it in exchange</p>	<p style="text-align: center;">Page 183</p> <p>1 L. Kruger 2 for the support for that settlement? 3 MR. KERR: Objection. 4 A. Of course not. 5 Q. Okay. 6 So what are the criteria you apply to 7 determine whether or not they should be getting 8 a claim? 9 A. The same one -- 10 MR. KERR: Objection. Asked and 11 answered. 12 A. The same one I just gave before. In 13 my judgment, the arguments as to whether or not 14 the claims of FGIC or the trust should be 15 equitably subordinated, could be subordinated 16 under the Bankruptcy Code, whether alter ego 17 arguments are possible, whether aiding and 18 abetting arguments are possible, all of those I 19 believe are the subject of litigation that 20 would be time consuming, costly, destroy the 21 global settlement agreement, and ultimately not 22 be for the benefit of the creditors for this 23 estate or for the estate of which I'm 24 responsible. 25 So, in my mind, a global settlement</p>
<p style="text-align: center;">Page 184</p> <p>1 L. Kruger 2 agreement is a far better outcome. 3 Q. I got time consuming. We're all 4 caught up in time consuming right now. I want 5 to talk about the merits. The merits. 6 Does a \$331 million claim at ResCap, 7 LLC reflect, in your view, the merits of 8 litigating a \$596 million claim to conclusion? 9 MR. KERR: Objection. 10 MR. WYNNE: Objection. Asked and 11 answered. Mischaracterizes his testimony. 12 A. I think I've answered that question. 13 Q. Answer it again, please. 14 MR. KERR: Objection. Asked and 15 answered. 16 BY MR. SHORE: 17 Q. That's your objection. 18 You can answer it again. 19 A. In my mind, as I've had said before, 20 I think the \$337 million claim in the context 21 of the global settlement agreement is an 22 appropriate resolution as part of the mosaic of 23 the global settlement agreement and is 24 appropriate under the circumstances as 25 reasonable and appropriate.</p>	<p style="text-align: center;">Page 185</p> <p>1 L. Kruger 2 Q. That wasn't my question. That's why 3 I wanted you to answer my question. 4 Does \$337 million reflect your 5 understanding of the likely result or within 6 the range of results that would occur if 7 independent of the global settlement FGIC 8 pressed its \$596 million claim? 9 A. I don't know the answer to that 10 question. 11 Q. Okay. 12 Let's focus on the disclosure 13 statement. Did you play any role in the 14 drafting of the disclosure statement sections 15 that discuss substantive consolidation? 16 MR. KERR: Objection. Objection. 17 This is not the time to be talking about 18 disclosure of planned confirmation issues. 19 All right? And if you're not going to 20 focus on the FGIC settlement, I will direct 21 him not to answer and Judge Glenn, I think, 22 will support me down the line on it. 23 BY MR. SHORE: 24 Q. Well, let me ask you this question. 25 Is there any basis for allowing FGIC</p>

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1 L. Kruger
2 to assert a derivative liability claim at
3 ResCap, LLC that would not exist for any other
4 creditor of RFC? Are you aware of any factual
5 distinction in the assertion of their claims at
6 ResCap, LLC?

7 A. I can't answer that question.

8 Q. And what about with respect to GMACM,
9 are you aware of any factual basis under which
10 FGIC should be able to assert a claim at
11 ResCap, LLC that makes them any different than
12 any other creditor of GMACM Mortgage?

13 A. I have not read the 6500 file proofs
14 of claim, so I don't know how to answer that
15 question.

16 Q. Okay.

17 So let's just deal with a
18 hypothetical creditor, and you can preserve
19 your objection and we'll see if we can get back
20 to an actual fact.

21 Hypothetically speaking, if another
22 creditor at GMACM had asserted a claim at
23 GMACM, is there any reason -- and asserted a
24 claim at GMACM Mortgage -- I'm sorry,
25 withdrawn.

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1 L. Kruger
2 you're not going to disclose any of the legal
3 advice that your lawyers gave you with respect
4 to the merits of the litigation that would
5 ensue with FGIC or the RMBS trusts; right?

6 MR. KERR: Let's put it this way. I
7 don't want him to disclose communications
8 he's had with counsel about those topics.
9 You can ask him with a judgments he has
10 reached after eliciting all this.

11 MR. SHORE: But I don't get the
12 substance of any of the advice that was
13 given to you?

14 MR. KERR: Right. It's privileged.

15 BY MR. SHORE:

16 Q. Let's go to the second, the
17 likelihood of complex and protracted
18 litigation. Let me just understand your
19 business perspective on this.

20 You've given a \$337 million claim at
21 ResCap, LLC. I take it that that's not just
22 because it would be a protracted litigation; in
23 other words, you don't have -- you didn't base
24 that on any view that the debtors would spend
25 hundreds of millions of dollars litigating that

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1 L. Kruger
2 Hypothetical creditor who asserts a
3 claim at GMACM Mortgage and at ResCap, LLC, on
4 alter ego theories, shouldn't they also be able
5 to get a claim at G -- sorry -- at ResCap, LLC?

6 MR. KERR: Objection. I'll direct
7 him not to answer that question.

8 MR. SHERWIN: On what basis?

9 MR. KERR: That's a hypothetical. It
10 has to do with planned confirmation. It
11 has nothing to do with the FGIC Settlement
12 Agreement.

13 MR. SHORE: Let me take a quick
14 break.

15 MR. KERR: Sure.

16 (Recess taken from 2:03 p.m. to
17 2:09 p.m.)

18 BY MR. SHORE:

19 Q. All right.

20 If you could turn to the Iridian
21 (phonetic) factors, which start on page 11.

22 We've gone through the -- with
23 respect to A, right, the balance between the
24 possibility of success, I take it that you're
25 following your counsel's instruction that

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1 L. Kruger
2 case; right, that proof of claim?

3 MR. KERR: Objection.

4 A. I don't know how much of that is
5 spent in litigating that proof of claim, but it
6 was part obviously of the global settlement
7 agreement, and that's what motivated me in part
8 to apply for a claim at the ResCap level. And
9 the recognition that if there were to be
10 litigation, there would obviously be no global
11 settlement agreement, and the litigation would
12 be both time consuming, costly and uncertain
13 outcome.

14 Q. Okay.

15 Did you have any views, form any
16 views of what it would take, how much it would
17 cost to litigate the FGIC issues at the time
18 you entered into the settlement agreement?

19 A. I was aware that there had been MBIA
20 litigation against ResCap prior to the filing
21 of the petition and had gone for three and a
22 half years. So I assumed this was going to be
23 a lengthy litigation, as well. I believe in
24 the MBIA more than a million documents were
25 produced. This looks to me like complex and

<p style="text-align: center;">Page 190</p> <p>1 L. Kruger 2 long-term litigation. 3 Q. Okay. 4 Other than your knowledge that the 5 MBIA litigation had gone on for three and a 6 half years, did you have any other view, any 7 other basis on which you formed your 8 conclusions that it would be a complex and 9 protracted litigation? 10 A. I had read, I think I referred to 11 before, the Carpenter Lipps report, memorandum. 12 That's what informed my view. 13 Q. Just so we are clear. I forgot to 14 ask this question before. 15 The NewOak analysis, Dr. D'Vari, did 16 you have that before you decided to enter into 17 the settlement agreement? 18 A. No, I did not. 19 Q. Okay. 20 Had they performed any analysis for 21 you prior to the entering into the settlement 22 agreement? 23 A. Not for me, no, they did not. 24 Q. Okay. 25 So I take it that your decision to</p>	<p style="text-align: center;">Page 191</p> <p>1 L. Kruger 2 enter into the settlement agreement was not 3 based in any way on any conclusions, either 4 preliminary or final, that NewOak had reached 5 with respect to the analysis set forth in 6 Dr. D'Vari's report? 7 A. That's correct. 8 Q. Okay. 9 Then if you turn to paragraph 34. 10 A. Yes. 11 Q. The arm's length negotiations, and 12 just so I'm clear. It's the debtor's position 13 that the mediation confidentiality order in 14 place prohibits the disclosure of any substance 15 between FGIC or its counsel, on the one side, 16 and the debtors and their counsel, on the other 17 side, with respect to the FGIC claims? 18 MR. KERR: Let me put it this way. I 19 think Mr. Kruger has described the 20 mediation, the involvement of people or 21 whatever; but I think the communications, 22 the substance, the back and forth, is 23 subject to the confidentiality order 24 entered by Judge Glenn, relied upon by 25 Judge Peck and all the parties.</p>
<p style="text-align: center;">Page 192</p> <p>1 L. Kruger 2 And so, in terms of the substance of 3 the communications back and forth, that's 4 confidential. 5 BY MR. SHORE: 6 Q. So what can you, beyond what you've 7 testified to today, tell me about the arm's 8 length nature of the negotiations with FGIC? 9 MR. KERR: Again, just without 10 disclosing any of the substance of the 11 conversations. 12 A. I can say that they were obviously 13 experienced trustees, experienced counsel, 14 experienced advisors, FGIC itself were 15 well-represented, and all of that a process 16 overseen by Judge Peck, looked to me like a 17 very vigorous, robust process that went on for 18 months. 19 Q. And let me talk about it from the 20 debtor's side. 21 What can you testify to today, other 22 than what you already have, to give any 23 creditor, creditors within the case, leave 24 aside the non-creditors in the case, comfort 25 that the debtors didn't just roll over and give</p>	<p style="text-align: center;">Page 193</p> <p>1 L. Kruger 2 a 330 million, \$337 million claim to FGIC in 3 exchange for a signature on a plan support 4 agreement? 5 MR. KERR: Objection. 6 A. Let me answer it this way. 7 We were part of the mediation process 8 all through it. I've only been part of the 9 mediation process since the middle of February. 10 And the mediation process, as I saw it myself, 11 was one that was both vigorously contested by 12 the parties. We had reviewed with people, 13 parties, the pros and cons of their positions. 14 We did that for Judge Peck, as well. 15 So I was informed with respect to all 16 of those kinds of issues, that presentations 17 made to me by parties, all of that led me to 18 believe that the global settlement agreement 19 was a sensible thing to pursue and that this 20 settlement agreement was an important part of 21 that. 22 Q. And that's the extent of your defense 23 of a concern that creditors at ResCap, LLC 24 might have that a 330 million, \$337 million 25 claim was given in exchange for a plan support</p>

<p style="text-align: center;">Page 194</p> <p>1 L. Kruger 2 agreement to foster the global settlement 3 which, of course, is important? 4 MR. KERR: Objection. 5 A. Because I believe that if there was 6 no global settlement agreement and there would 7 be no \$337 million claim available at ResCap, 8 there would be no \$2.1 billion coming into the 9 estate, there would be very little recovery for 10 a creditors out of this estate, and ResCap, 11 GMAC or RFC. 12 Q. Well, let's peel that apart. 13 First of all, if the global 14 settlement didn't occur, the -- no one would 15 release claims against Ally; right? 16 A. Right. 17 Q. And we would have every cause of 18 action that was identified against Ally in the 19 examiner's report would still be a valid claim 20 that the debtors would bring that's not time 21 barred; right? 22 A. Examiner's report? 23 Q. In the examiner's report. The 24 examiner's report lays out all sorts of claims 25 that the debtors could bring and might even win</p>	<p style="text-align: center;">Page 195</p> <p>1 L. Kruger 2 against Ally; right? 3 A. I'm not going to comment on the 4 examiner's report. It's all hearsay whether 5 the advised causes of action that are sensible 6 to pursue or not is subject to a different 7 conversation. 8 Q. But the claims, whatever the claims 9 are, whether you believe what Judge Gonzales 10 said or whatever ResCap has looked at 11 internally, the claims would still be there? 12 A. Which claims are these? 13 Q. The claims against Ally -- 14 A. Sure. 15 Q. -- that you're trying to preserve 16 again. 17 Why does the -- what I don't 18 understand is, why does the amount of the claim 19 at ResCap, LLC go up or down depending upon the 20 global settlement? I could understand that the 21 recovery would go up. You're right. They will 22 recover a lot more on their \$337 million claim 23 in the event of a global settlement than they 24 will in the event that these cases get 25 converted. I get that.</p>
<p style="text-align: center;">Page 196</p> <p>1 L. Kruger 2 Why does the claim amount differ? 3 MR. KERR: And, again, if you can 4 answer that question without revealing what 5 was discussed and agreed to in the 6 confidential mediation. 7 A. All I can say is that that claim 8 amount results from the global settlement 9 agreement. 10 Q. And that's it? 11 A. That's it. 12 MR. SHORE: Okay. 13 I have no further questions. 14 Anybody else? 15 MR. CARNEY: Mike Carney. I have 16 about 10 minutes. 17 18 EXAMINATION BY MR. CARNEY: 19 Q. Sir, I'm Michael Carney again from 20 McKool Smith for Freddie Mac. 21 The ResCap trust holding FGIC wrapped 22 securities claims have claims against the 23 debtors; is that correct? 24 A. Sorry? Say that again. 25 Q. The ResCap trust holding FGIC wrapped</p>	<p style="text-align: center;">Page 197</p> <p>1 L. Kruger 2 securities have claims against the debtors; is 3 that correct? 4 A. Yes. 5 Q. Okay. 6 What's your understanding of these 7 claims? 8 A. What the trust claims are against the 9 debtor? 10 Q. Yes. 11 A. Representation and warranty claims, 12 indemnity and insurance claims. Also 13 securities claims, rider claims. 14 Q. Any others you can think of off the 15 top of your head? 16 A. No. 17 Q. Okay. 18 And FGIC has claims against the 19 debtors, too; right? 20 A. Yes. 21 Q. And what's your understanding of the 22 nature of those claims? 23 A. FGIC has laid out funds on behalf of 24 the debtors. The debtors has not reimbursed 25 them for those expenditures. FGIC has also</p>

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1 L. Kruger
2 submitted claims against the debtor with
3 respect to the funds that it advanced that the
4 debtor has not responded to. So I assume they
5 have money damage claims.

6 Q. Okay.

7 I think Exhibit 1 was the settlement
8 agreement. I'd like to turn to that briefly.
9 And I'd just like you to turn to Section 2.02
10 of that.

11 A. Yes.

12 Q. And it just begins with the paragraph
13 Trustees, just the first sentence where it
14 says, "The trustees, in consultation with their
15 advisors, shall have the sole -- shall have
16 sole and exclusive authority to determine each
17 payment amount payable to a trust, such
18 denomination to be made in accordance with the
19 allocation methodology set forth in Exhibit F
20 hereto. The sum of all payment amounts shall
21 not exceed \$253.3 million."

22 A. Uh-huh.

23 Q. The first question is: To your
24 knowledge, will the trustees, if the settlement
25 is approved, receive a set amount of

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1 L. Kruger
2 \$253.3 million?
3 A. As a group, I would I assume so, yes.
4 Q. So then what I just was curious about
5 is if you have any understanding of this --
6 A. Not to exceed.
7 Q. Yes.

8 Why is it phrased that the sum of all
9 payments will not exceed 253.3 million?

10 A. I'm not sure I know the answer
11 sitting here.

12 Q. Okay.

13 But, to your knowledge, the cash
14 payment, if the settlement is approved, of
15 253.3 million, will go to the trustees; is that
16 correct?

17 A. I believe so.

18 Q. All right. Thank you.

19 Obviously, I don't want you to go
20 into the substance of the mediation, but were
21 you aware that the debtors, ResCap, was
22 negotiating the amount the trust would receive
23 in satisfaction of the trust policy claims?

24 MR. KERR: Objection. Assumes facts
25 not in evidence.

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1 L. Kruger
2 A. No.
3 Q. No. Okay.

4 So was -- what is your idea of how
5 that or -- so you're saying the 253.3 million
6 amount was never on the negotiating table, to
7 your knowledge?

8 MR. KERR: Objection.

9 A. Not for me, not to my knowledge.
10 Q. Okay.

11 MR. CARNEY: I don't believe -- has
12 the D'Vari objection been marked yet? I
13 don't believe it has. I'm sorry, the
14 D'Vari declaration.

15 MR. KERR: No, I don't think so.

16 MR. CARNEY: Then I'd like to mark it
17 as Exhibit -- what are we up to? 14.

18 (Kruger's Exhibit 14, D'Vari
19 Declaration, was marked for
20 identification.)

21 BY MR. CARNEY:

22 Q. Do you recognize this declaration?
23 A. Yes, I do.

24 Q. And can you tell me why was it
25 prepared?

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1 L. Kruger
2 A. It was prepared as part of the
3 process of getting approval of the 9019 motion
4 with respect to the FGIC settlement, but for
5 Dr. D'Vari to provide an analysis of what the
6 maximum lifetime collateral losses of FGIC
7 trusts might be.

8 Q. And why was that important?

9 A. Because that prospective liability is
10 what was being released as part of the FGIC
11 settlement.

12 Q. Okay.

13 And so can you just explain -- this
14 might be asking the same question a different
15 way, but why are the losses to the RMBS trust
16 important to you?

17 A. Well, because those represent claims
18 against the estates that I am CRO for, and I'm
19 happy to have them go way.

20 Q. Fair enough.

21 And could you please turn to page 31
22 of the D'Vari declaration. I'm sorry,
23 paragraph 31. Paragraph 31 on page 9.

24 Do you see here that it estimates the
25 trustees's losses at a total lifetime

Page 202	Page 203
<p>1 L. Kruger 2 collateral losses at around 5.4 billion? 3 A. Yes. 4 Q. Yes. Okay. 5 MR. CARNEY: I don't believe that 6 Mr. Holzer's affidavit has been marked, has 7 it? 8 All right. I'll mark that. 9 (Kruger's Exhibit 15, Holzer 10 Affidavit, was marked for 11 identification.) 12 BY MR. CARNEY: 13 Q. Unfortunately, this looks as if the 14 second page is missing, but this is Exhibit 10 15 to the 9019 motion. 16 And you can see on the top, you can 17 see the case number and the doc number and the 18 Holzer affirmation. 19 MR. KERR: You'll see that it looks 20 like the first page of the Holzer was not 21 copied. 22 (A Discussion was Held off the 23 Record.) 24 MR. CARNEY: Let's mark a clean copy. 25 If we could disregard that one and just</p>	<p>1 L. Kruger 2 replace it with this. 3 MR. KERR: Well, actually, this is -- 4 this looks like it's a broader document. 5 MR. CARNEY: It is, but we can 6 only -- I'm only going to refer in this to 7 the -- after the order to show cause, this 8 portion of it. 9 (Kruger's Exhibit 15, Holzer 10 Affidavit, was remarked for 11 identification.) 12 BY MR. CARNEY: 13 Q. Sorry about that. Bear with me. 14 If you could just turn to the 15 actual -- it's double-sided, so the first -- 16 the back side of the third page. 17 And it begins with "Supreme Court of 18 the State of New York," and it's called an 19 affirmation. 20 A. Right. 21 Q. If you could turn to paragraph -- 22 first of all, do you recognize this document? 23 A. Yes. 24 Q. Okay. 25 And do you agree that it was attached</p>
<p>1 L. Kruger 2 as Exhibit 10 to the 9019 motion? 3 A. I believe it was, yes. 4 Q. Okay. 5 And are you familiar with this 6 document? 7 A. I've read it. 8 Q. Okay. 9 And if you could please turn to 10 paragraph 14 on page 6. 11 A. Uh-huh. 12 Q. It appears to me that -- I mean, here 13 FGIC claims that there are total amount of 14 596.5 million of claims against ResCap entities 15 for -- which is equal to 342 million previously 16 paid, plus a 253.3 million payment -- 17 253.3 million payment which would be paid under 18 the settlement in settlement of all future 19 claims; is that correct? 20 A. Uh-huh. 21 Q. Okay. 22 But then if you turn to paragraph 21 23 of the Holzer affidavit or affirmation, when it 24 discusses why the rehabilitation court should 25 approve the settlement, it, FGIC, or Mr. Holzer</p>	<p>1 L. Kruger 2 has estimated that there are \$789 million in 3 claims currently pending against FGIC, as well 4 as \$400 million in claims FGIC expects will 5 arise in the future. 6 Do you agree with that? 7 MR. KERR: Objection. Do you agree? 8 It's written in the document. 9 BY MR. CARNEY: 10 Q. Do you agree it's written in the 11 document? Yes, certainly. 12 A. Yes. 13 Q. Okay. 14 And my question is: Can you account 15 for the difference in numbers in Dr. D'Vari's 16 declaration of losses to the RMBS trustees of 17 5.4 million, which I believe are all FGIC 18 wrapped trusts, versus FGIC's estimated losses 19 that total, I think around 1.1 billion? 20 Do you -- 21 MR. KERR: Objection. 22 BY MR. CARNEY: 23 Q. Can you tell me why those two numbers 24 are different? 25 A. No.</p>

<p style="text-align: center;">Page 206</p> <p>1 L. Kruger 2 Q. And you have no idea why they would 3 be? 4 A. No. 5 All right. Just cover one more. 6 When do you remember the, what we've been 7 calling the FGIC commutation, when do you 8 remember that first being discussed? 9 MR. KERR: Objection. Asked and 10 answered. 11 A. March sometime. 12 Q. March. Thank you. 13 I can't remember from the beginning 14 of the day. 15 And do you know who suggested it 16 originally? 17 A. No. 18 Q. You don't. You do not. Okay. 19 And did the debtors have an opinion 20 about the FGIC commutation once you became 21 aware of it? 22 MR. KERR: Objection. 23 A. Happy to see it take place. I guess 24 I'm not sure how to answer that question. 25 Q. Strike that.</p>	<p style="text-align: center;">Page 207</p> <p>1 L. Kruger 2 Did you personally have an opinion 3 about it when you became aware of it? 4 MR. KERR: Objection. 5 A. Yes. 6 Q. And what was that opinion? 7 A. That if it could be accomplished in 8 the context of a global settlement agreement, 9 it would be helpful. 10 Q. Uh-huh. 11 But other than -- strike that. 12 Is it your understanding that the 13 FGIC computation was insisted upon as part of 14 that global settlement? 15 MR. KERR: Objection. On that, I 16 will direct -- I think that's covered by 17 the confidential mediation order, and I'll 18 direct the witness not to answer that. 19 BY MR. CARNEY: 20 Q. And I assume you're going to abide by 21 your counsel's direction? 22 A. Yes. 23 Q. Did you or did the debtors, rather -- 24 first we'll start with the debtors -- did the 25 debtors do any substantive analysis of the FGIC</p>
<p style="text-align: center;">Page 208</p> <p>1 L. Kruger 2 computation? 3 MR. KERR: Objection. Asked and 4 answered. 5 A. No. 6 Q. Okay. 7 And just to close the circle one more 8 time, and I -- if the FGIC computation were not 9 part of a global settlement but everything else 10 was, would it have mattered to you that the 11 FGIC computation wasn't included as part of 12 that settlement? 13 MR. KERR: Objection. Asked and 14 answered. You asked that question before. 15 I objected to it as a hypothetical. 16 MR. CARNEY: I understand. I just -- 17 he can answer. 18 A. If everything else was in place and I 19 didn't -- we didn't pay -- the \$253 million 20 didn't get paid and the releases all took place 21 and there was a consideration for them, 22 everything else could have been perfect, yes. 23 Q. You could have cared less? 24 MR. CARNEY: Thank you. That's all I 25 have.</p>	<p style="text-align: center;">Page 209</p> <p>1 L. Kruger 2 FURTHER EXAMINATION BY MR. SHORE: 3 Q. The assertion of this mediation 4 privilege works both ways. 5 First of all, what are the concerns 6 the debtors have, if any, about disclosing what 7 they said to people about the FGIC claims? 8 MR. KERR: Are you asking Mr. Kruger 9 or me? 10 MR. CARNEY: Mr. Kruger. 11 BY MR. SHORE: 12 Q. Do you have any concerns about any of 13 the substance of materials that passed from the 14 debtors to FGIC should remain confidential? 15 MR. KERR: Objection. 16 A. I think they should. 17 Q. Why? 18 A. Because I think otherwise people who 19 are participating in the mediation process 20 would not have comfort in knowing that 21 everything that they said and talked about was 22 confidential. 23 Q. So -- 24 A. That might have chilled the 25 negotiation process.</p>

<p style="text-align: right;">Page 210</p> <p>1 L. Kruger 2 Q. Okay. 3 So are you saying that you would have 4 been chilled in the negotiation process if you 5 knew that ultimately some court might need to 6 see what you said to people in the negotiation? 7 MR. KERR: Objection. 8 A. I don't know. 9 Q. Can you think -- just answer yes or 10 no. Can you think of something you said to 11 FGIC in the mediation you wouldn't want Judge 12 Glenn to see? 13 MR. KERR: Objection. I'll direct 14 him not to answer. That -- there's an 15 existent order, Chris, directing the 16 parties to comply with it. The fact that 17 the debtors complied with an order, I don't 18 understand where this is going.</p> <p>19 BY MR. SHORE: 20 Q. Can you answer my question? 21 A. No. 22 Q. Okay. 23 And has there been any consideration 24 on the debtor's part to seek to have that 25 confidentiality -- confidentiality order</p>	<p style="text-align: right;">Page 211</p> <p>1 L. Kruger 2 modified now that you have an approved PSA? 3 A. No. 4 Q. Okay. 5 And have you had any discussions with 6 FGIC to see whether FGIC would be willing, now 7 that the PSA is approved, of allowing the 8 materials it gave to the debtors during the 9 negotiations to be disclosed as part of the 10 9019? 11 MR. KERR: Did Mr. Kruger have those 12 conversations? 13 A. No. 14 MR. SHORE: Nothing further.</p> <p>16 FURTHER EXAMINATION BY MS. EATON: 17 Q. How are you being compensated for 18 your work as -- 19 A. Pursuant to the court order of March 20 5th, I get paid \$895 an hour for a time period. 21 And I have the right to request a success fee, 22 whatever that might mean, at some point during 23 the course of this process. 24 Q. Have you made any request for a 25 success fee?</p>
<p style="text-align: right;">Page 212</p> <p>1 L. Kruger 2 A. Not yet. 3 Q. Have you discussed the amounts of the 4 success fee with anyone at ResCap? 5 A. With anyone at ResCap? 6 Q. Pardon me. At the debtor's? 7 A. Yes. 8 Q. What did you discuss in that regard? 9 A. I discussed it with members of the 10 board. 11 Q. What did you discuss with members of 12 the board about the success fee? 13 MR. KERR: Again, if you had 14 discussions outside the presence of 15 counsel -- 16 A. Not outside the presence of counsel. 17 Q. Have you settled on the terms of your 18 success fee? 19 A. No. 20 Q. Have you discussed whether you would 21 get any portion of a success fee -- let me 22 start over. 23 In your discussions with the board 24 about your success fee, has it been tied in any 25 way, directly or indirectly, to the approval of</p>	<p style="text-align: right;">Page 213</p> <p>1 L. Kruger 2 the FGIC Settlement Agreement? 3 A. No. 4 Q. When you were being interviewed -- 5 you were interviewed prior to your appointment 6 as chief restructuring officer? 7 A. Yes, I was. 8 Q. Who were you interviewed by? 9 A. Members of the board of ResCap. 10 Q. Do you remember who those people 11 were? 12 A. I think so. Some of them anyway. 13 Certainly Jonathan Ilany, John Mack, Tom 14 Marano. I don't recall who else might have 15 been present. 16 Q. During that interview process, did 17 you discuss with any one or more of those 18 people the status of the settlement discussions 19 that were ongoing at that time? 20 A. No. 21 Q. You didn't discuss the mediation at 22 all? 23 A. I knew the mediation was ongoing, but 24 I did not discuss it with them. 25 Q. What, if anything, did any of those</p>

<p style="text-align: center;">Page 214</p> <p>1 L. Kruger 2 individuals say to you about what the outcome 3 that the debtors were seeking with respect to 4 those negotiations?</p> <p>5 MR. KERR: This is while he was 6 interviewed?</p> <p>7 BY MS. EATON:</p> <p>8 Q. Yes. Before he became chief 9 restructuring officer.</p> <p>10 A. That their goal was to see a 11 confirmed reorganization plan that treated 12 creditors fairly in a reasonable time frame.</p> <p>13 Q. Did you discuss the FGIC wrapped 14 trust at all?</p> <p>15 A. No.</p> <p>16 MS. EATON: That's it.</p> <p>17 MR. KERR: Anybody else?</p> <p>18 MR. KAUFMAN: I have a couple of 19 questions.</p> <p>21 EXAMINATION BY MR. KAUFMAN:</p> <p>22 Q. I just want to touch briefly, 23 Mr. Kruger, on a couple of the things that 24 Mr. Shore was asking you about.</p> <p>25 A. Uh-huh.</p>	<p style="text-align: center;">Page 215</p> <p>1 L. Kruger 2 Q. You remember Mr. Shore asking you 3 about the proof of claim filed by FGIC, which I 4 think is Kruger Exhibit 12?</p> <p>5 A. Yes. 6 Q. And -- 7 A. Give me a minute to find it without 8 spilling my Coca-Cola. 9 Ready.</p> <p>10 Q. Do you have that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Okay.</p> <p>13 And Mr. Shore asked you in connection 14 with that proof of claim whether you recalled 15 it containing some recitation of an aiding and 16 abetting claim.</p> <p>17 Do you remember that?</p> <p>18 A. Yes.</p> <p>19 Q. And I believe your answer was you 20 don't remember or don't see that it contains 21 the words "aiding and abetting."</p> <p>22 Do you remember that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 In fact, let me direct your attention</p>
<p style="text-align: center;">Page 216</p> <p>1 L. Kruger 2 to paragraph 32 of the proof of claim which 3 appears on page 13.</p> <p>4 A. I have it.</p> <p>5 Q. Okay.</p> <p>6 And in the first sentence of that 7 paragraph, it reads, "For the reasons discussed 8 above in paragraphs 24 to 26, and further in 9 FGIC's complaints, ResCap is jointly and 10 severally liable to FGIC under a theory of 11 alter ego liability for the harms FGIC has 12 suffered from the fraudulently inducement 13 committed by GMACM and RFC."</p> <p>14 Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. And that, do you agree that that 17 sentence references an alter ego theory of 18 liability?</p> <p>19 A. Correct.</p> <p>20 Q. The next sentence of the proof of claim states, "In addition, because GMACM and 22 RFC were acting at the direction of ResCap, 23 ResCap may be jointly and severally liable to FGIC for the harms FGIC has suffered from the 25 fraudulent inducement committed by GMACM and</p>	<p style="text-align: center;">Page 217</p> <p>1 L. Kruger 2 RFC."</p> <p>3 Do you see that?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Would you agree that that sentence, 6 although not specifically containing the words 7 "aiding and abetting," in fact, reflects the 8 aiding and abetting theory that is contained in 9 the 12 complaints filed by FGIC prior to the 10 bankruptcy?</p> <p>11 MR. SHORE: Objection to form.</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 Speaking of those complaints, do you 15 remember Mr. Shore asking you whether you could 16 think of any differences between FGIC as a 17 creditor and other creditors?</p> <p>18 Do you remember that line of questions?</p> <p>19 A. Yes.</p> <p>20 Q. Did every other creditor file complaints prior to the bankruptcy?</p> <p>21 A. No.</p> <p>22 Q. So that would be one way in which FGIC was distinct?</p>

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1 L. Kruger
2 A. Yes.
3 Q. Okay.
4 A. 12 of them.
5 MR. KAUFMAN: No further questions.
6 MR. KERR: Other questions?
7 I think we're done then.
8 Thank you, everybody. I appreciate
9 everybody working to keep it within the
10 time restraints set by the judge.
11 Thank you.
12 (The deposition was concluded at
13 2:40 p.m.)
14 (The exhibits were retained by the
15 court reporter.)

LEWIS KRUGER

Subscribed and sworn to before me
this day of 2013.

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1 L. Kruger
2
3 C E R T I F I C A T E
4
5 STATE OF NEW YORK)
6) ss.:
7 COUNTY OF NEW YORK)
8
9 I, THOMAS A. FERNICOLA, Registered
10 Reporter and Notary Public within and for
11 the State of New York, do hereby certify
12 that the within is a true and accurate
13 transcript of the proceedings held on
14 July 11, 2013.
15 That I am not related to any of the
16 parties to this action by blood or
17 marriage; and that I am in no way
18 interested in the outcome of this matter.
19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this 11th day of July, 2013.

THOMAS A. FERNICOLA, RPR

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1 L. Kruger
2 ----- INDEX -----
3 ATTORNEY PAGE
4 Ms. Eaton 9
5 Mr. Carney 99
6 Mr. Shore 104
7 Mr. Carney 196
8 Mr. Shore 209
9 Ms. Eaton 211
10 Mr. KAUFMAN 214

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1 L. Kruger
2 ----- EXHIBITS -----
3 KRUGER'S
4 DESCRIPTION PAGE LINE
5 Exhibit 1 Settlement Agreement 11 25
6 dated May 23, 2013,
7 Exhibit 2 Document entitled 64 16
8 Declaration of Lewis Kruger,
9 Exhibit 3 Declaration of Lewis 78 14
10 Kruger,
11 Exhibit 4 Order Granting Debtor's 86 15
12 Motion Pursuant to Rule 9019,
13 Exhibit 5 Notice of Filing of 92 3
14 Lewis Kruger's First Monthly Fee
15 Report, Compensation for
16 Professional Services Rendered and
17 Reimbursement of Expenses Occurred,
18 Exhibit 6 Document, Bates Nos. 95 19
19 FGIC 901933899 through 34122,
20 Exhibit 7 Document, Bates Nos. 95 22
21 FGIC 901933813 through 33898,
22 Exhibit 8 Document, Bates Nos. 95 25
23 FGIC 901933760 through 33812,
24 Exhibit 9 Document, Bates Nos. 96 5
25 FGIC 901934123 through 34204,

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1 L. Kruger
2 ----- EXHIBITS (Cont'd) -----
3 KRUGER'S
4 DESCRIPTION PAGE LINE
5 Exhibit 10 Document, Bates Nos. 96 8
6 FGIC 901934258 through 34324,
7 Exhibit 11 Notice of Deposition, 103 25
8 Exhibit 12 Proof of Claim by FGIC, 145 14
9 Exhibit 13 Documents, 174 12
10 Exhibit 14 D'Vari Declaration, 200 18
11 Exhibit 15 Holzer Affidavit, 202 9
12 Exhibit 15 Holzer Affidavit, 203 9
13
14
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1 L. Kruger
2 ERRATA SHEET FOR THE TRANSCRIPT OF:
3 Case Name: In Re: Residential Capital, LLC, et al
4 Dep. Date: July 11, 2013
5 Deponent: LEWIS KRUGER
6 Reason codes:
7 1. To clarify the record.
8 2. To conform to the facts.
9 3. To correct transcription errors.
10 Page ____ Line ____ Reason _____
11 From _____ to _____
12 Page ____ Line ____ Reason _____
13 From _____ to _____
14 Page ____ Line ____ Reason _____
15 From _____ to _____
16 Page ____ Line ____ Reason _____
17 From _____ to _____
18 Page ____ Line ____ Reason _____
19 From _____ to _____
20 _____
21 LEWIS KRUGER
22
23 Subscribed and sworn to before me
24 this day of 2013.
25 _____

Deposition Errata Sheet

In re Residential Capital, LLC, et al.,
Case No. 12-12020(MG)

Deponent: Lewis Kruger
Deposition Date: July 11, 2013

Citation	Testimony
20:23-25	direct him not to answer that in confidentiality , based on the confidentiality mediation <u>confidentiality</u> .
23:22	A. No. <u>Yes.</u>
41:20	A. That's correct. <u>These were the only documents that I saw reflecting and incorporating the terms of the agreement.</u>
42:3-4	A. I'm trying to answer the question, but in terms of documents <u>that I saw reflecting and incorporating the terms of the agreement</u> , that's correct.
48:15	Cathy <u>Kathy</u> Patrick?
51:3	border <u>broader</u> plan issues.
53:6	A. That is <u>not</u> correct.
68:6	A. I did, <u>as did the Debtors' Board of Directors.</u>
115:9	A. I don't think so <u>I relied on other written materials.</u>
119:22	present, Cathy <u>Kathy</u> Patrick among them, and others
127:20	A. I don't think there's anything <u>else.</u>
157:15	\$337 billion <u>million</u> allocation?
162:23-24	A. They argue alter ego <u>and maybe</u> may be aiding
165:2425	came to a conclusion myself that it was not an appropriate <u>inappropriate</u> for there to be a FGIC claim at
166:9	think it's a <u>planned</u> <u>plan</u> confirmation

Citation	Testimony
181:22-182:6	it does seemed <u>seem</u> to me that the alternative to the global settlement is no Ally contribution of \$2.1 billion, which I believe is a lot of money; secondly, that the outcome of no Ally settlement and no global settlement agreement would mean that the parties themselves, all the inter-creditor issues would come the forth <u>fore</u> , creditors would be suing each other, creditors would be suing ResCap.
182:10	to the detriment of all competitors <u>creditors</u> . And I
187:10	has to do with planned <u>plan</u> confirmation. It

Date: 8/8/13

Signed: Lewis Kruger
Lewis Kruger